In the

Supreme Court of the United States

October Term, 1939

Ex Parte:

In the Matter of Wallace S. Bransford as County Treasurer of Pima County, Arizona, and ex-officio Tax Collector.

ORIGINAL

No. .....

MOTION FOR LEAVE TO FILE PETITION FOR MANDAMUS ACCOMPANIED BY PETITION FOR MANDAMUS

J. MERCER JOHNSON
County Attorney of Pima County, Arizona
Tucson, Arizona.

GERALD JONES
303-6 Valley National Building,
Tucson, Arizona.

Attorneys for Petitioner.

PIMA TUCSON

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Now comes Wallace S. Bransford, County Treasurer of Pima County, Arizona, and ex-officio Tax Collector, by J. Mercer Johnson, County Attorney of Pima County, Arizona, and Gerald Jones, his attorneys, and moves the Court for leave to file the petition for mandamus printed herewith to compel Honorable David W. Ling, Judge of the United States District Court for the District of Arizona, and the United States District Court for the District of Arizona, to call two additional judges pursuant to the provisions of Section 266 of the Judicial Code, Title 28, U. S. C. A., Section 380, to hear an application for an interlocutory injunction in a certain action pending in said court wherein Valley National Bank of Phoenix, Arizona, is plaintiff, and your petitioner and others are defendants, number

E-333 on the records and files of said court, a copy of the Second Amended and Supplemental Bill of Complaint in said cause being appended to said petition for mandamus.

Dated January 26, 1940.

WALLACE S. BRANSFORD
County Treasurer of Pima County, Arizona.

Petitioner

J. MERCER JOHNSON
County Attorney of Pima County, Arizona.
Address: Tucson, Arizona

GERALD JONES
Address: 303-6 Valley National Building,
Tucson, Arizona

Attorneys for Petitioner

In the

Supreme Court of the United States

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Ex Parte: In the Matter of Wallace S. Bransford as County Treasurer of Pima County, Arizona, and ex-officio Tax Collector.	ORIGINAL No. ..... PETITION FOR WRIT OF MANDAMUS

To the Honorable, Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petition of Wallace S. Bransford as County Treasurer of Pima County, State of Arizona, and ex-officio Tax Collector, respectfully shows:

(1) That on or about October 23, 1935 a bill in equity was filed in the clerk's office of the District Court of the United States for the District of Arizona by the Valley National Bank of Phoenix, Arizona, a national banking association, against your petitioner's predecessor in office as such county treasurer and others as defendants, and summons therein was served upon the defendants.

(2) That said defendants did appear in said cause and certain proceedings were taken therein, and thereafter and on April 24, 1939 the plaintiff in said action did file its Second Amended and Supplemental Bill of Complaint, a copy whereof being appended as an exhibit to this petition, and your petitioner, as County Treasurer and Tax Collector aforesaid, was duly substituted for petitioner's predecessor in said office.

(3) That the plaintiff in said action in connection with its said Second and Supplemental Bill of Complaint did make application for an interlocutory injunction to restrain your petitioner and all defendants from the collection of taxes levied for state and local purposes for the year 1935 against the shares of stock held by the shareholders in the plaintiff on the ground, among others, that the said levies were in violation of the plaintiff's rights under the Constitution and laws of the United States.

(4) That the interlocutory injunction sought by the plaintiff would, if granted, suspend and restrain the enforcement, operation and execution of the statutes of the State of Arizona, and, in particular, Section 3071 of the 1928 Revised Code of Arizona, and especially the last sentence thereof, by restraining the action of an officer of the State of Arizona, to-wit, your petitioner, and other defendants, in the enforcement and execution of such statute, on the ground of the unconstitutionality thereof.

(5) That your petitioner, and the other defendants,

believing that said application for an interlocutory injunction presented a cause falling withing the terms of Section 266 of the Judicial Code, Title 28, U. S. C. A., Section 380, did apply to the Honorable David W. Ling, Judge of said District Court, that he call to his assistance to hear and determine said application two other judges in conformity with said section; that after hearing upon defendants' application, and on November 9, 1939, the said Judge and Court did rule that the plaintiff's application for a temporary and interlocutory injunction was not a matter for consideration by a three judge court under said section and did indicate that he would, sitting alone, hear plaintiff's said application.

(6) That as your petitioner is informed and believes and therefore avers neither your petitioner nor any of the said defendants will have an appeal to this court from any judgment or order of said district court if but a single judge presides for the reason that such an appeal lies only where a three judge court is established pursuant to said section; that your petitioner is informed and believes and therefore avers that no appeal will lie to the Circuit Court of Appeals for the Ninth Circuit from any such order or judgment for the reason that under said section of the Judicial Code a three judge court should be formed and a single judge court has no jurisdiction to proceed.

(7) That your petitioner is without adequate relief otherwise than through this petition.

WHEREFORE, your petitioner prays that a rule be made and issued from this Honorable Court directed to the Honorable David W. Ling, Judge of the United States District Court for the District of Arizona, and directing the said District Court of the United States for the District of Arizona, to show cause why a writ of mandamus should not issue commanding the said judge and the said court, and each of them, to call to the assistance of the said judge, Honorable David W. Ling, two other judges to hear and determine said application for an interlocutory injunction and other proceedings in said cause, and why your petitioner should not have such other and further relief as may be just and meet.

WALLACE S. BRANSFORD
County Treasurer of Pima County, Arizona, and ex-officio Tax Collector.

Petitioner

J. MERCER JOHNSON
County Attorney of Pima County, Arizona.
Address: Tucson, Arizona.

GERALD JONES
Address: 303-6 Valley National Building,
Tucson, Arizona.

Attorneys for Petitioner

STATE OF ARIZONA)
COUNTY OF PIMA) ss.

Wallace S. Bransford, being first duly sworn, deposes and says: That he is County Treasurer of Pima County, Arizona, and ex-officio Tax Collector charged with the duty of collecting state and local taxes; that he is a party to the action in the United States District Court for the District of Arizona referred to in the foregoing petition; that he has read the foregoing petition and knows its contents and that the said petition is true in substance and in fact.

WALLACE S. BRANSFORD

Subscribed and sworn to before me this 26th day of January, 1940.

My commission expires March 16, 1942.

CHARLES E. CONNER
Notary Public, Pima County, Arizona.

(Seal of Notary)

EXHIBIT

In the District Court of the United States for the District of Arizona

THE VALLEY NATIONAL BANK, OF PHOENIX,

Plaintiff,

vs.

MARICOPA COUNTY, ARIZONA;

HARRY M. MOORE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona;

J. D. BRUSH, as County Assessor of Maricopa County, Arizona;

C. W. PETERSON, JOHN A. FOOTE and GEO. FRYE, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona;

PIMA COUNTY, ARIZONA;

WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona;

No. E-333

Phoenix

SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

(For Injunction Against Collection of Taxes)

CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona;

THOMAS COLLINS,
R. H. MARTIN, and
J. B. MEAD, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona;

GRAHAM COUNTY, ARIZONA;

CHARLES M. GEITZ, as County Treasurer and Ex-Officio Tax Collector of Graham County, Arizona;

ALVIN GOODMAN, as County Assessor of Graham County, Arizona;

J. W. GREENHALGH,
GLEN HOOPES, and
VIRGIL McEUEN, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Graham County, Arizona;

MOHAVE COUNTY, ARIZONA;

C. B. TATUM, as County Treasurer and Ex-Officio Tax Collector of Mohave County, Arizona;

W. O. RUGGLES, as County Assessor of Mohave County, Arizona;

F. L. HUNT,
W. D. LAWE, and
E. T. LYONS, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Mohave County, Arizona;

FRANK LUKE,
THAD M. MOORE, and
D. C. O'NEIL, as Members of and Constituting the State Tax Commission and the State Board of Equalization of the State of Arizona,

Defendants.

Comes now the above named plaintiff, and for its Second Amended and Supplemental Bill of Complaint against the above named defendants, alleges:

I.

That plaintiff is, and was at all times herein mentioned, a corporation, duly incorporated as a national banking association under the laws of the United States of America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the County of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.

That plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock.

That the defendants, Maricopa County, Pima County, Graham County, and Mohave County, each are and at all times herein mentioned, were duly organized and existing counties of the state of Arizona, and political subdivisions of said state;

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Maricopa County, and is sued herein as such officer, having been duly substituted as a party defendant in place of the said Harry M. Moore;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants C. W. Peterson, John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein mentioned were the duly elected, qualified and acting members of and have constituted and do now constitute

the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county, that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima County, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and resident of Pima County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident of Pima County, Arizona, has been duly elected a member of the Board of Supervisors of Pima County, Arizona, to succeed Warren A. Grossetta, and that said Thomas Col-

lins, R. H. Martin and J. B. Mead do now constitute the Board of Supervisors of Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and Acting County Treasurer and Ex Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein as such officer, having been substituted as a party defendant in place of said Charles M. Geitz;

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of and constituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That since the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, have

succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois now constitute the Board of Supervisors of said Graham County and the Board of Equalization of said county, and are sued herein as such officers, the said Ernest D. Householder and M. E. Dubois having been substituted as parties defendant in the place of J. W. Greenhalgh and Virgil McEuen;

That C. B. Tatum is a citizen and resident of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by A. M. Cook, a citizen and resident of Mohave County, and that said A. M. Cook is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Mohave County, Arizona, and is sued herein as such officer, having been duly substituted as a party defendant in the place of said C. B. Tatum;

That the defendant, W. O. Ruggles is a citizen and resident of Mohave County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That the defendants, F. L. Hunt, W. D. Lawe and E. T. Lyons are citizens and residents of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause were the duly elected,

qualified and acting members of the Board of Supervisors of said Mohave County, and the Board of Equalization of said county; that since the filing of the original complaint in this cause, William Mackie and George F. Moser, each a citizen and resident of Mohave County, Arizona, have been duly elected members of the Board of Supervisors of Mohave County, Arizona, to succeed F. L. Hunt and E. T. Lyons, and that said W. D. Lawe, William Mackie and George F. Moser, do now constitute the Board of Supervisors of Mohave County, Arizona, and are sued herein as such officers, the said William Mackie and George F. Moser having been substituted as parties defendant in place of F. L. Hunt and E. T. Lyons.

That the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil are residents of Maricopa County, Arizona, and are now and at all times herein mentioned have been the duly elected, qualified and acting members of and have constituted, and do now constitute the State Tax Commission and State Board of Equalization of the State of Arizona.

II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, and that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona, in the city of Tucson, and the town of Ajo, in Pima County, Arizona, in the town of Safford, Graham County, Arizona, in the city of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and town of Hayden, in Gila County, Arizona, in the town of Clifton, Greenlee County, Arizona, in the towns of Superior, Coolidge and Casa Grande, in Pinal County, Arizona, and in the city of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national association, including the receiving of commercial deposits, demand and time saving deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a trust department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chattel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds and mortgages and other securities, and evidences of indebtedness.

IV.

That it was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all

taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 2, of Article IX of the Constitution of the State of Arizona, that there shall be exempt from taxation all federal, state, county and municipal property.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable property within said state must be assessed at its full cash value, and that the term, "full cash value" shall mean the price for which property would sell if voluntarily offered for sale by the owner thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069 Revised Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property

in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of and be payable by such corporation or association.

V.

That it was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing, and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in January, and the first day of May, of each year, the County Assessor, (except as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or corporations or association engaged in the business of using money wherewith to make money, shall make out and deliver to the assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares

owned by him, the surplus, reserve fund and undivided profits, and the par and market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources, and that every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation

is subject to taxation in more than one county, city or town, and the proportion of its assets situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their assets as the assets situated in that county, city of town bear to the assets of the entire corporation or association, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, and at all times thereafter until after the first Monday in May, 1935, the amount of its capital stock was $260,000.00, its surplus was $260,000.00, its undivided profits were $90,026.52, and its resources $89,000.00, making a total as the basis for the valuation of its shares of common capital stock of $699,026.52. That its common capital stock consisted of 52,000 shares, of the par value of $5.00 each. That to provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national

banks in the acquisition and transaction of the banking business which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corporation of the United States of America, purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, $1,240,000.00 par value of preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of $6.25 each, and that all of said preferred stock was issued to said Reconstruction Finance Corporation, and said Reconstruction Finance Corporation paid to plaintiff therefor the par value thereof, on or prior to said 11th day of February, 1935, and ever since the issuance thereof said preferred stock has been and now is owned and held by and is the property of the Reconstruction Finance Corporation of the United States of America.

VII.

That after the 11th day of February, 1935, and prior to the first day of May, 1935, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office or any of its branches was and is situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of

its common stock and the shares of its preferred stock above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits, as above stated, and the par value of its shares, both common and preferred, as is required by Section 3071, Revised Code of Arizona, 1928. Each of said statements showed the proportion of plaintiff's assets situated in each of the counties in which its principal office or a branch thereof was and is situated. That said statement showed the common capital stock of the plaintiff was $260,000.00, that its surplus was $260,000.00, that its undivided profits were $90,026.52, and that its reserves were $89,000.00, making a total as the basis for the valuation of its common capital stock of $699,026.52. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties, to-wit:

Maricopa County,	54.57 per cent
Pima County,	26.53 per cent
Graham County,	2.34. per cent
Mohave County,	1.37 per cent
Gila County,	6.86 per cent
Greenlee County,	3.32 per cent
Pinal County,	3.22 per cent
Yavapai County,	1.79 per cent

VIII.

That for many years immediately prior to the year 1934, it was the uniform practice followed by the county assessors of the several counties of the state of

Arizona, and approved by the Tax Commission of the State of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of said bank, and that in the year 1934, all or substantially all of the banks in the State of Arizona protested to the State Tax Commission of the State of Arizona, sitting as a Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said banks at its full cash value, when other classes of property in said state were assessed at an amount equal to 60% of their cash value, and that in consideration of said protests, said State Tax Comission, sitting as a Board of Equalization, in the year 1934, made a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held by Reconstruction Finance Corporation, and expressly left that question to be determined by the courts.

IX.

That plaintiff is informed and believes, and upon such information and belief states that the State Tax Commission of the State of Arizona, said Tax Commission consisting of the same individuals as the State Board of Equalization, in the exercise of its supervisory powers over the county assessors of the State of Arizona, directed and instructed the county assessors of the State of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, and that the county assessors of the several counties of the state, (except the county assessor of Mohave county) in pursuance of said instructions of the State Tax Commission, valued for tax purposes for the year 1935 the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks as shown by the books of said banks.

X.

That in pursuance of a general plan and understanding among the taxing officials of the state of Arizona, including the members of the State Board of Equalization who are parties to this suit it has been the practice of the taxing officials of the state of Arizona for many years to assess property in the state of Arizona generally, at an amount equal to approximately 60% of its full cash value, and that said practice, in

pursuance of said general plan and understanding among said taxing officials, was continued and followed in the year 1935, and was approved by the State Board of Equalization in the year 1935.

XI.

That the county assessors of Gila, Greenlee, Pinal and Yavapai Counties, fixed the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in their respective counties by following the instructions of the said State Tax Commission, and applying the same to the statements filed by the plaintiff in their respective counties, that is to say, by adding together the common capital stock, surplus and undivided profits and reserves, as shown by said statement, and taking the percentage of the sum so arrived at shown by plaintiff's statement as the proper percentage for that county, and then taking 75% of the amount so arrived at as the assessable value of plaintiff's shares of stock in said county. That plaintiff makes no objection to the valuations arrived at by the counties of Gila, Greenlee, Pinal and Yavapai, as hereinabove set forth, and has not made, and does not now make any protest or objection to said valuations.

XII.

That the County Assessor of Maricopa County arrived at the valuation to be placed upon plaintiff's shares of stock for tax purposes for the year 1935 by adding together the amount of the common capital

stock, surplus, undivided profits and reserves shown by the statement filed by him as aforesaid, and adding to the amount so arrived at the sum of $1,240,000.00, being the par value of the preferred stock of plaintiff issued to and owned and held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of $1,939,026.00. Said county assessor then took 54.57 per cent of said sum, (said 54.57% being the percentage shown by the statement filed with him by plaintiff as the percentage properly apportioned to Maricopa County), thus arriving at $1,058,126.77 as the amount apportioned to Maricopa County, and then computed 75% of said amount, making the sum of $793,595.08, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936 in said Maricopa County. That of the aforesaid valuation of $793,595.08, 54.57% of 75% of $1,240,000.00, or $507,501.00, was and is the valuation placed by said county assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

XIII.

That the county assessor of Pima county assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows, to-wit:

"ASSESSED VALUATION OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY

1935

Co-Apportionment—13,795.6 shares of stock @ $23,7459
Totalling $327,590.00

REAL ESTATE, IMPROVEMENTS & PERSONAL PROPERTY HOLDINGS OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY, 1935

Description of Property	Lot	Blk	Real Estate Valuation	Imps. Val.	Personal Prop. Val.
Ajo	4	15	125		
Ajo	5	15	150	1405	785.00
Description of Property	Lot	Blk	Real Estate Valuation	Imps. Val.	Personal Prop. Val.
Tucson S 62' of N 123.04' of W 72.94' of Lot 3	10	208	13,020		
Tucson N 58' of W 64. 73' of Lot 3 together with a 3' strip on S-Sub 12		208	27,945	171,130	110,000.00
Rincon Heights	13	8	110		
Rincon Heights	14	8	110	1370	
$S\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$ (3), 21-13-14-D-4 Acres			10		
W-1 Acres			5		
$E\frac{1}{2}SW\frac{1}{4}$ less parcel 1 & 5 (4) 26-13-14 D-58.81a			335		
$S\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$ & $NW\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ & $E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ (6) 27-13-14 P-20a			220		
W-15a			15		
$S\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$ (8) 27-13-14 P-17a			190	55	
W-3a			5		

S½SW¼NW¼ (17) 27-13-14	1-5		115
	W-15		15
Part of N½ S½ of Sec. 28 lying N of Rillito R (18) 28-13-14	D-25		75
	W-31.3		30
E½SW¼NW¼ & E½NW¼SW¼ NW¼ & E½SW¼SW¼NW¼ (23) 28-13-14	P-10		110
	D-10		30
	W-7.5		10
S¾S½SW¼NE¼ (28) 28-13-14	1-5		115
	D-10		60
E½ of SW¼NW¼NW¼ & E½NW¼NW¼NW¼ (42) 28-13-14	P-1.6		20
	W-5.9		5
	Total		$327,590.00

Detail of Personal Property:
Bank Fixtures—$110,000.
Bank Fixtures
in Ajo ..... 875.

XIV.

That it appears from the foregoing computation made by the county assessor of Pima County that the valuation arrived at by said county assessor in Pima County for the year 1935, was $327,590.00 That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the tangible real and personal property owned by plaintiff in said county, or upon plaintiff's common capital stock, or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's real and personal property, it is wholly void as un-

authorized by the statutes of the state of Arizona, and if it is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Pima County of approximately $6.30 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately $23.75 per share. That $400,000.00 worth of the $1,240,000.00 par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to purchase the assets of Consolidated National Bank, a national bank doing business at Tucson, Pima County, Arizona. That said assets of said Consolidated National Bank were practically all situated in said Pima County, and were purchased by plaintiff in February, 1935. That among said assets were the banking furniture and equipment and the banking house and office building owned by said Consolidated National Bank in the city of Tucson, which constitute practically all of the tangible real and personal property assessed in the manner aforesaid, as constituting the assessable value of plaintiff's shares of stock in Pima county.

XV.

That the aforesaid valuation of the county assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, the undivided

profits of $90,926.52, and the reserves of $89,000.00, is $699.026.52, which represents the shares of common capital stock of the plaintiff. Of this amount 26.53%, or the sum of $185,451.73 is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock apportioned to Pima county. To make allowance for probable shrinkage in book assets, and the normal difference between the book value of assets and the actual value of the shares of stock in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of $46;362,93 must be deducted, leaving the amount of $139,088.80 as the actual cash value for the year 1935, of that portion of plaintiff's shares of common stock which is assessable in Pima county. That the excess over said sum of $139,088.80 assessed against the shares of stock of plaintiff by the county assessor of Pima County, which is the amount of $188,-501.20, was assessed on account of valuations represented by plaintiff's preferred stock owned and held by the Reconstruction Finance Corporation.

XVI.

That the County Assessor of Graham County assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows:

West 30 feet of Lot 1, Safford,
Block 39:

Value of Land	$ 2,250.00
Value of Improvements	14,615.00
Lot 8, K & G, Block 2:	
Value of Land	120.00
Summary of Values:	
Total personal property	5,605.00
Total Real Estate	2,370.00
Total improvements	14,615.00
Total for County and State taxation	$22,590.00

That in addition to the foregoing, said Assessor assessed certain real estate acquired by the plaintiff in the year 1935, prior to the date that the above and foregoing assessment was made, from The Consolidated National Bank of Tucson, as follows:

Northwest Quarter (NW^1_4) and West Half (W^1_2) of the Northeast Quarter (NE^1_4) and Northwest Quarter (NW^1_4) of the Southeast Quarter (SE^1_4) of Section 21, Township 6, Range 25:

Acres	142
Class of Land	CUL
Value of Land	$4,050.00

Lots One (1) and Two (2), Section 21, Township 6, Range 25:

Acres	50
Class of Land	CUL

Value of Land	$1,420.00
Value of Improvements	1,200.00
Consolidated National Bank:	
Acres	125
Class of Land	W
Value of Land	$ 125.00
Total Real Estate	5,595.00
Total Improvements	1,200.00
Total for County and State Taxes	$6,795.00

That all of the foregoing property of plaintiff assessed by said county assessor of Graham county was acquired by plaintiff on or prior to the 11th day of February, 1935, from The Valley Bank & Trust Company, a State Bank, and the Consolidated National Bank of Tucson, a National Banking Association, both of which institutions were actively engaged in transacting a banking business at and prior to the time when said property was transferred by them to the plaintiff and that all of said property was included in the statement of capital, surplus, undivided profits and reserves filed by the plaintiff with said county assessor as aforesaid.

XVII.

That the total amount of the assessment in Graham county, being the sum of $22,590.00, plus $6,795.00, or $29,385.00, as shown by the above tabulations, was arrived at by said county assessor by taking the assessa-

ble value of all of the real and personal property owned by the plaintiff in said county. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the real and personal property owned by the plaintiff in said county, or whether it was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If construed as imposed upon the tangible real and personal property of plaintiff in said county, it is wholly unauthorized and void under the statutes of the state of Arizona. If it is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham county, or approximately .56c per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately $24.00 per share. That $840,000.00 worth of the $1,240,000.00 worth, par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to pay off a debenture of $840,000.00 owed by The Valley Bank & Trust Company to Reconstruction Finance Corporation. Said The Valley Bank & Trust Company was a state bank, having its principal place of business in Maricopa County, and branches in several other counties, including Graham County. That all of the assets of said bank were purchased by plaintiff in February, 1935, and said debenture of $840,000.00 was paid by plain-

tiff out of the proceeds of plaintiff's preferred stock sold to Reconstruction Finance Corporation. That the assets of the Graham county branch of said The Valley Bank & Trust Company were 4.427% of the total assets of said The Valley Bank & Trust Company, and the pro rata part of the Graham county branch of said debenture of $840,000.00 was 4.427% of said $840,000.00, or $37,186.80 of the proceeds plaintiff received from the sale of its preferred stock to Reconstruction Finance Corporation went into said Graham county branch. That the aforesaid valuation by said county assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $90,026.52, and the reserves of $89,000.00 which represents the shares of common capital stock of plaintiff, is $699,026.52. Of this amount, 2.34%, or $16,357.22, is properly apportioned to Graham county representing that portion of plaintiff's shares of common stock apportioned to Graham county. From said sum must be deducted one-fourth thereof, or the sum of $4,089.80 to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock, in accordance with the method prescribed by the State Tax Commission, as aforesaid, leaving the amount of $12,267.42 as the true valuation for tax purposes for the year 1935 of that portion of plaintiff's shares of

common stock which is assessable in Graham county. That the valuation arrived at by the county assessor of Graham county in excess of said sum of $12,267.42, said excess being $17,117.58, was assessed upon values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

XVIII.

That if the aforesaid assessments by the county assessors of Pima and Graham counties are construed as assessments and valuations of the property owned and held by the plaintiff in said counties as other property held by individuals and other corporations of said counties are assessed and valued, said assessments and valuations are wholly unauthorized and void for the reason that under the provisions of Section 3069, Revised Code of Arizona for 1928, and the decisions of the Supreme Court of Arizona construing said section, the property of banking associations or corporations engaged in the business of banking is not assessable or taxable, but only the shares of stock of such banking association or corporations are assessable and taxable.

That if the aforesaid assessments and valuations in Pima and Graham counties are construed as assessments and valuations of the shares of stock of the plaintiff, both common and preferred, and the taxes computed thereon payable by the holders of the common and preferred stock, said assessments and valuations are wholly void for the reason that said shares of preferred stock being owned and held by the Reconstruc-

tion Finance Corporation of the United States, are wholly exempt from state, county and local taxation under the Constitution and laws of the United States and the constitution and laws of the State of Arizona, and said assessments do not segregate the valuation placed upon the shares of common stock from the valuation placed upon the shares of preferred stock. That the shares of preferred stock of plaintiff are preferred both as to dividends and as to distribution of assets in case of liquidation, and are limited to participation in dividends and distribution of assets in the event of liquidation, and that as a result of such preferences and limitations so conferred and imposed upon them, the relation of the actual value of said shares to the par value thereof is not the same as the relation of the actual value of the shares of common stock to the par value of said common shares.

That if the aforesaid assessments in Pima and Graham counties are construed as assessments and valuations of the shares of common stock of the plaintiff, and the taxes computed thereon payable wholly by the owners of said shares of common stock, then such assessments and valuations are wholly void, for the reason that the same are excessive, confiscatory and discriminatory, greatly in excess of the actual value of said common shares, and discriminatory between the holders of said shares of common stock and the holders of common shares of stock in other banks, and also between the holders of the shares of common stock in the plaintiff, and other classes of property assessed in said

counties of Pima and Graham, and in said state of Arizona, for the following reasons:

1. That said assessments and valuations are void and confiscatory for the reason that in Pima county the sum of $188,501.20 of the total assessment of $327,590.00, and in Graham county the sum of $17,117.58 of the total assessment of $29,385.00, is assessed against said shares of common stock, not by reason of any assets represented by said shares of common stock, or by reason of any inherent value of said shares of common stock, but by reason of values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

2. That said assessments and valuations are excessive and confiscatory for the reason that said valuations of $327,590.00 in Pima county, if deemed the valuation placed upon the shares of common stock of plaintiff, is a valuation of approximately $23.75 per share and said valuation of $29,385.00 in Graham county, if deemed a valuation placed upon the shares of common stock of plaintiff is a valuation of approximately $24.00 per share, when the book value of said shares of stock determined by the value of the assets of the plaintiff, as shown by plaintiff's books is approximately $13.50 per share, and the actual value of said shares of common stock as determined by actual sales made during the assessment period for the year 1935 is approximately $11.00 per share.

3. That the said assessments and valuations of

$327,590.00 of Pima county, and of $29,385.00 in Graham county, if construed as assessments upon plaintiff's shares of common stock, are discriminatory against the holders of plaintiff's shares of common stock and in favor of the holders of common stock in other banks in the state of Arizona, for the reason that the holders of the common stock in other banks (said banks as far as known to the plaintiff having issued no shares of preferred stock owned or held by the Reconstruction Finance Corporation), have been assessed and valued by the direction of the State Tax Commission for tax purposes for the year 1935 at 75% of the capital stock, surplus and undivided profits of said banks, and that the holders of common stock of the plaintiff have been assessed for tax purposes in said two counties for the year 1935 at approximately twice the capital stock, surplus and undivided profits of the plaintiff.

4. That if said assessments and valuations of $327,590.00 in Pima county, and $29,385.00 in Graham county, are construed as assessments and valuations upon portions of plaintiff's common stock said assessments and valuations discriminate against the holders of the common stock of the plaintiff and in favor of the owners and holders of other classes of property in the state of Arizona, in that said shares of common stock of the plaintiff have been valued and assessed at approximately twice the actual value thereof, when other classes of property in the state of Arizona,

by a general plan adopted by said taxing officials of the state of Arizona, have been valued and assessed at not to exceed 60% of their actual cash value.

5. That if said assessments and valuations are construed as assessments and valuations of the shares of common stock of plaintiff, said assessments and valuations discriminate against the owners and holders of plaintiff's shares of common stock and in favor of the owners and holders of other moneyed capital in the state of Arizona, in violation of Section 548, Title 12 of the United States Code Annotated, in that said shares of stock have been assessed at approximately twice their actual value, while other moneyed capital in the hands of individual citizens of the state of Arizona coming into competition with the business of national banks, has been assessed at not to exceed 75% of its actual cash value.

XIX.

That the County Assessor of Mohave County assessed the shares of stock of the plaintiff as follows: He added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making a total valuation of its shares of common stock of $699,026.52, and taking 1.37% thereof as the proper percentage for Mohave County, thus arriving at a calculation of $9,576.66, which said county assessor

placed on the tax roll as the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in his county; that said valuations so made by the county assessor of Mohave County included no valuations attributable to preferred stock of the plaintiff, and was proper, except that there should have been deducted from the sum of $9,576.66 as shown by the statement filed by plaintiff, one-fourth thereof, or the sum of $2,394.16 and leaving the sum of $7,182.50 as the actual cash value for tax purposes for the year 1935 of that portion of plaintiff's shares of common stock which is assessable in Mohave county. That said deduction of one-fourth must be made as aforesaid in order to place the valuation of plaintiff's shares of stock on the same basis as the valuation of the shares of stock of other banks in the state of Arizona, which were all valued either by the county assessors or the State Board of Equilization by the method prescribed by the State Tax Commission hereinabove set forth.

XX.

That within the time provided by law plaintiff filed a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equilization in each of the counties of Maricopa, Pima, Graham and Mohave, being all of the counties in which the assessments and valuations of its shares of stock are complained of herein, and that

within the time provided by law plaintiff appeared before the County Board of Equilization in each of said counties and urged the correction and reduction of said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXI.

That none of the aforesaid County Boards of Equalization made any changes in the valuations made as aforesaid by the respective county assessors upon the shares of stock of the plaintiff, and the Clerk of each of said boards of supervisors, immediately after the July adiournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

County	Valuation on Tax Roll
Maricopa	$793,595.08
Pima	327,590.00
Graham	29,385.00
Mohave	9,576.66

XXII.

That on or about the 7th day of August, 1935, the plaintiff filed a written protest with the defendants,

Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima County, Graham County and Mohave County, protesting against said valuations in all respects herein complained of, and on said 7th day of August, 1935, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations in all respects herein complained of. That said defendants, sitting as a Board of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXIII.

That within the time provided by law the said State Board of Equalization fixed the rate of taxation to be levied for state purposes transmitted to the Board of Supervisors of each of the respective counties that are parties defendant to this suit, a statement of the changes which it had made in the assessment, (no change whatever having been made in the assessment of plaintiff's shares of stock) and the rate of taxes which was to be levied and collected within said county for state purposes. That each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the respective county assessors as hereinabove alleged.

XXIV.

That after the completion of the valuation of plaintiff's shares of stock and the placing hereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns in each of said counties, (except the city of Phoenix, in Maricopa County), finally determined the estimates provided for by Section 3098 Revised Code of Arizona for 1928, and the school superintendents in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona for 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state tax, at the rate fixed aforesaid, upon the taxable property of the county and computed and carried out the real and personal taxes and total taxes of each person on said tax rolls, and computed at the proper tax rates determined by the Board of Supervisors or the State Board of Equalization upon the aforesaid valuations, and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff, and as payable by the plaintiff, the following amounts, to-wit:

Maricopa	$49,810.86
Pima	20,362.98
Graham	1,894.88
Mohave	399.08

XXV.

That upon completion of the tax rolls for the year 1935, said tax rolls containing thereon the respective items of taxes set forth in Paragraph XXIV above, the Chairman of the Board of Supervisors of each of said counties, as prescribed by statute, annexed thereto under his hand, a warrant, commanding the County Treasurer and Ex-Officio Tax Collector to collect from the several persons named in said tax roll, including plaintiff, one-half of the taxes set opposite their respective names, including the illegal and void taxes, taxed, assessed and levied as aforesaid, on or before the first Monday in November, 1935, and the other one-half of said taxes on or before the first Monday in May, 1936. That said tax rolls, together with said warrants, were delivered to the respective county treasurers of said counties parties defendant hereto, in the manner and within the time provided by law.

XXVI.

That upon receipt of said assessment and tax rolls each of said county treasurers being parties defendant hereto, gave official notice specifying that one-half of said taxes, including said illegal and void taxes so levied and assessed upon plaintiff's said shares of stock, would be due and payable on the first Monday in September, 1935, and would become delinquent on the first Monday in November, 1935, at 5:00 o'clock p. m., and that the remaining one-half of said taxes would be due

and payable on the first Monday in March, 1936, and would become delinquent on the first Monday in May, 1936, at 5:00 o'clock p. m., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinquency at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter interest would accrue thereon at the rate provided in the tax certificates issued covering the sale of said property, but not to exceed fifteen per cent per annum.

XXVII.

That before the first Monday in November, 1935, and before the filing of this bill of complaint, and during the regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be justly due and owing by the owners and holders of its shares of common stock to said county treasurers for state, county and local taxes for the year 1935. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County,	$17,938.09
Pima County,	8,637.30
Graham County,	808.58
Mohave County,	298.78

The plaintiff determined the amounts so above tendered as the amounts justly due and owing to the said county treasurers for taxes for the year 1935, by computing the valuations of its common capital stock in the manner in which said county treasurers were directed to compute the same by the State Tax Commission, excluding, however, from said computation plaintiff's shares of preferred stock held by the Reconstruction Finance Corporation and the assets represented thereby. That is to say, plaintiff added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making the sum of $699,026.52, and then took the proper percentage thereof apportioned to each of said counties, to-wit: Maricopa County 54.47 per cent, Pima County 26.53 per cent, Graham County, 2.34 per cent, Mohave County, 1.37 per cent, which gave the following figures:

Maricopa County,	$381,458.77
Pima County,	185,451.73
Graham County,	16,357.22
Mohave County,	9,576.66

and then took 75% of each of said amounts, thus arriving at the actual cash value in each of said counties for plaintiff's shares of stock as follows:

Maricopa County,	$286,094.08
Pima County,	139,088.80
Graham County,	12,267.91
Mohave County,	7,182.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities therein, thus arriving at the taxes in each of said counties at the amounts alleged to have been tendered.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against the shares of common capital stock in the several counties that are parties defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and said State Board of Equalization had applied the same basis of valuation to plaintiff's shares of common capital stock as they applied to the shares of other banks, state and national, doing business in the state of Arizona, and is likewise the amount that the taxing officials and State Board of Equalization would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

XXVIII.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county treasurers, on refusing said tender, declared that it was his duty to

collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the State of Arizona.

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if this court shall hold that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the purposes for which said tenders were made, are less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1935 taxes, plaintiff stands ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as this court shall find to be just and equitable.

XXIX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens

and encumbrances upon said property, except liens and encumbrances held by the state of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one weeks' notice of the time and place thereof, and must be of sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and delivery of

the property with a bill of sale thereof, title thereto vest in the puchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in November, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest from the time of delinquency at the rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided.

XXX.

That by virtue of the foregoing provisions of the statutes of the state of Arizona, the taxes levied and assessed upon plaintiff's shares of stock for the year 1935 in the manner aforesaid, whether legal or illegal, became payable on or before the fourth day of November, 1935.

Plaintiff in the year 1935, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County.

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1935,

and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective counties and upon the real estate of the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 4th day of November, 1935, became subject to seizure and sale for said taxes in the manner provided by the Statutes of Arizona above set forth. That by reason of the statutes above mentioned, plaintiff could not with safety to itself permit the transfer of shares of its stock on its books or pay dividends to its shareholders on its shares of stock and if it refused to permit such transfers or refused to pay any such dividends on account of the non-payment of said taxes by said shareholders, it might subject itself to numerous suits brought by its shareholders to compel such transfers or to recover damages for refusing to make such transfers or to pay dividends.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed upon both classes of stock, it was impossible to apportion the same between the common and preferred shares. Hence, if plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its shareholders to charge said payment,

or if it charged the same to both classes, it would not know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would subject itself to a separate suit for damages by each of its shareholders.

That plaintiff, finding itself involved in the difficulties above mentioned, filed its original Bill of Complaint in this court before the fourth day of November, 1935, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly provided that the rights of any party to prosecute or defend this suit should not

be prejudiced or affected in any way by said stipulation, or anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his county against plaintiff's shares of stock for the year 1935, including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That plaintiff is informed and believes and upon such information and belief alleges that said County Treasurer will proceed to collect such taxes in the manner provided by law unless restrained by the order of this court, and that by reason of the aforesaid action of the County Treasurer of Pima County, all of the defendants now renew their threat to enforce collection of the taxes hereby sought to be enjoined. That those county officers made parties defendant hereto who have come into office since filing the original Bill of Complaint continue the threat of their predecessors to enforce collection of said taxes, and that by reason of the aforesaid threats, plaintiff now renews its application for temporary injunction.

XXXI.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as reviewed by the

State Board of Equalization may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of, for the following reasons:

1. That said appeal is by said Section 3065 limited to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof.

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrongfully assessed.

3. That the valuations made by the county assessors of Pima and Graham counties sought to be reviewed herein by plaintiff, present an issue as to the proper division of the assets of plaintiff between each of said counties and the county of Maricopa, in which the principal office of plaintiff is situated, and that said issue cannot be considered or determined on such appeal.

That such appeal would have to be taken separately from the valuation made by each of the four counties to the Superior court of that county. The question of apportionment among said four counties would have to be determined separately in each of said counties without an opportunity for any county, except the one

in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be four different decisions and four different appeals to the Supreme Court, all of which would have to be determined without opportunity for the several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against his property, and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determination of said appeal and the judgment on the appeal, if in favor of the appellant, can only be a judgment against the county for the amount of the excess taxes paid and such judgment will be of little value to the plaintiff for the reasons hereinafter set forth.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an administrative remedy and plaintiff, under the constitution and laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity.

XXXII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person

upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction shall ever issue in any county or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the collection of any tax levied.

That it was and is provided by the aforesaid Section 55, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided," but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the Revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten days after receipt of a letter from the State Treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county treasurer shall pay to the treasurer of each City or Town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town.

That it was and is provided by Section 1029, Re-

vised Code of Arizona for 1928, that the county treasurer shall receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any or all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

XXXIII.

That at the time of the filing of the original complaint in this cause there was no controlling decision by the courts of Arizona determining the nature of the judgment that should be rendered in a case to recover taxes paid under protest, under the provisions of Section 35 of Chapter 103, Arizona Session Laws of 1931. Plaintiff alleged in the original complaint that it might

be held by the courts of Arizona that separate actions would be required to be brought against the county and the state and school districts, and the municipalities to which the taxes sought to be recovered had been distributed, and that if it were so held, it would be impracticable for plaintiff to pay the taxes and sue to recover the amount paid from the various counties, school districts and municipalities, on account of the multiplicity of suits that would be required to be brought in such event. That since the filing of the original complaint in this cause, on or about the 10th day of October, 1935, the Supreme Court of Arizona construed Section 55 of Chapter 103 of the Session Laws of 1931 so as to give a taxpayer who had paid taxes under protest and sued to recover the same, an ordinary judgment against the county into whose treasury the money was paid by the taxpayer. Said court construed said Section 55 as not creating a trust fund of the tax moneys paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to refund the particular moneys paid to him, and further interpreted said Section 55 with other sections construed together therewith as giving to the taxpayer who has paid his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest, if the taxes are shown to have been illegal, a judgment against the county, which

it is the duty of the Board of Supervisors of the county to pay out of funds in the county treasury not otherwise apportioned, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it. That the remedy as thus given to the taxpayer who pays illegal taxes under protest is wholly inadequate for the reason that if the plaintiff in this suit should pay the illegal taxes herein complained of under protest, and should sue to recover the same and obtain a judgment against the respective counties, it would be unable to realize on said judgments for the reason that there are no funds in the treasuries of the said counties not otherwise apporpriated which can be applied to the payment of said judgments, and that the duty imposed upon the Board of Supervisors to include such judgments in the budget can be exercised only at the time provided by law for the making of the budget, to-wit, on or about the first Monday in August of each year. That provision for said budget is made by Sections 3097 and 3098, Revised Code of Arizona for 1928, and by such sections, and by Sections 3093 and 3094, Revised Code of Arizona for 1928, providing for the levy of taxes, no allowance is made for delinquencies in collection, so that if the plaintiff should recover judgments for taxes paid under protest, against the several counties that are parties defendant to this suit, by virtue of the sections of the statute aforesaid, a levy would be made only for the amount of such judgments, with-

out any allowance whatsoever for delinquencies in the collection of taxes.

That by reason of the existing financial depression, and the difficulty of collecting taxes in all of the counties which are parties defendant to this suit, a large percentage of the taxes levied becomes delinquent and remains uncollected for a period of years, and a large percentage of the taxes hereafter levied will become delinquent and remain uncollected for a period of years.

That plaintiff is advised and believes, and upon such information and belief alleges that in Maricopa County, in which the largest amount of illegal taxes which plaintiff seeks to enjoin are claimed to be payable, the percentage of unpaid taxes amounts to more than twenty-five per cent, and that in all probability such percentage of delinquency will continue for a number of years to amount to more than twenty-five per cent, and that by the provisions of Section 33, Chapter 103, of the Arizona Session Laws of 1931, the proceeds of such delinquent taxes, when collected, are required to be distributed for the purposes for which they were originally levied, (exclusive of penalties, which go to the general fund of the county) and the statutes of the state of Arizona make no provision for a further levy to cover delinquencies in collection of the original levy, and that for the last four sessions the legislature of the state of Arizona, has passed laws to a large extent remitting penalties on delinquent taxes. That it is provided by said Chapter 103, Session Laws of Arizona for 1931, that real property subject to the lien for taxes thereon,

or for taxes on personal property assessed to the same owner, may be sold and when so sold is subject to redemption for a period of three years. That the taxing officials in the several counties who are parties defendant to this suit owing to the large amount of delinquent taxes therein, permit a period of time as long as five years to elapse before making such sales, and in some of the counties in which plaintiff is assessed for taxes, no sales for taxes have been made for several years, nothwithstanding deliquencies in the payment thereof, and that if and when such sales are made there are usually no purchasers for said real estate and the same is and will continue to be struck off to the state of Arizona, and no money will be collected on account of such sales until the expiration of the period of redemption, which is three years from the date of the sale, and that by reason of said provisions of the statutes of Arizona, and the existing financial depression, if plaintiff should pay the illegal taxes assessed against its shares and sue to recover the same from the respective counties it would probably be more than a year from the date plaintiff obtained judgment before it would receive any payment on said judgment, and it would be many years before it would receive payment of more than two-thirds of said judgment, and in all probability a large percentage of said judgment would never be paid at all for the reason that the full amount of the levy for said judgment would in all probability never be collected, and by reason of the acts of the legislature

heretofore passed and which will probably be passed hereafter, waiving the collection of penalties on delinquent taxes, there probably never will be sufficient unappropriated money in the treasury of said counties to pay said judgments in full.

That the illegal taxes against which plaintiff seeks relief in this cause are required to be paid to four different county treasurers, and there is no provision under the laws of Arizona by which one action or proceeding may be brought against the four counties, and therefore plaintiff would in all events be required to bring at least four separate actions to recover illegal taxes paid by it under protest. That the duty enjoined by law upon the Board of Supervisors to include judgments for illegal taxes paid under protest in the budget and to make a levy for said judgments if neglected by said Board of Supervisors is enforcible only by mandamus. That if said Board of Supervisors in each of said counties should neglect to include the judgments that might be recovered by plaintiff in their budgets, plaintiff would be required to bring four separate actions in mandamus against said Boards of Supervisors, after having brought four separate actions to recover judgments.

That by reason of the foregoing facts, plaintiff has the right to resort to a federal court of equity to enjoin the collection of said illegal taxes, to avoid the necessity of bringing a multiplicity of suits.

XXXIV.

That as appears from paragraphs numbered XIII and XIV of this Second Amended and Supplemental Bill of Complaint, the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham counties, are based upon a valuation of the physical properties owned and held by plaintiff in said counties. That plaintiff is advised and believes, and upon such information and belief alleges that the taxing officials of said counties take the position and will assert in any proceeding to recover taxes assessed by them from plaintiff that under the provisions of Section 3071, Revised Code of Arizona for 1928, they have the right to value plaintiff's shares of stock at an amount not less than the actual cash value of the real and personal property of the plaintiff situated in their respective counties, and that said defendants will attempt to justify the assessments made by them upon the real and personal property of the plaintiff in the said counties of Pima and Graham as being a valuation of the shares of stock of plaintiff, in an amount equal to the actual cash value of the real and personal property of the plaintiff situated in said counties, and that said taxing officials will assert in this suit, and will assert in any suit involving the collection of taxes from plaintiff for said counties, that the valuation of plaintiff's shares of preferred stock must be apportioned to Maricopa County, the county in which plaintiff's principal banking house is situated and that the

taxing officials of Maricopa County do assert and will assert in this suit, or in any suit involving the collection of the taxes imposed by them upon the plaintiff that a proper proportion of plaintiff's shares of preferred stock must be apportioned to the several counties in which the plaintiff has branches, and that if the plaintiff should pay the taxes assessed against it in the several counties involved in this suit, and should seek to recover that portion of the taxes imposed on account of its preferred stock by separate suits against each of the several county treasurers of said counties the defense will be made to the suits filed to recover the excessive amount of said taxes in Pima and Graham counties that there was an improper apportionment of the taxable valuation of plaintiff's property as between Maricopa County and each of said counties of Pima and Graham an issue which could not be determined in separate suits to recover the taxes paid, nor in any suit except a proceeding in equity to which the taxing officials of said counties of Maricopa, Pima and Graham are made parties.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that said Board eliminated all values repre-

sented by plaintiff's preferred stock from such assessments for said 1937 taxes, except that in the case of Pima County the assessment was again made for an amount equal to the full value of the tangible, real and personal property owned by the plaintiff and situated in that county, said Pima county thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said values from said assessment and said Pima county imposed a tax of approximately $11,400.00 on values represented by plaintiff's preferred stock owned and held by the Reconstruction Finance Corporation. Plaintiff did not appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, and sued to recover said sum of $11,400.00 from Pima county, or, in the alternative, if Pima county's method of assessment should be found correct by the court, to recover said sum pro rata from the other counties to which it was paid.

The trial court held that the plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931; that there is no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court has once said by way of dictum that the

remedy provided by Section 55, Chapter 103, Session Laws 1931, is available only when the tax is assessed under an unconstitutional law, and again it has said by way of dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, is available whenever no other remedy is provided by law. There being conflicting declarations by it, said Supreme Court does not consider itself bound by either expression and deems the question wholly open for future decision.

XXXV.

That by reason of the foregoing facts, plaintiff has no adequate remedy by payment of the illegal taxes, and suing to recover the same, and is entitled to maintain this suit in equity for the purpose of preventing a multiplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

XXXVI.

That by reason of the provisions in the statute of the state of Arizona hereinbefore alleged, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff is without remedy in the courts of the state of Arizona, and has no remedy except in the United States District Court, for the District of Arizona.

XXXVII.

That the plaintiff has exhausted all administrative

remedies available to it under the statutes and laws of the state of Arizona.

XXXVIII.

That by reason of all the matters and things hereinbefore alleged, plaintiff, unless granted the relief herein prayed for, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

XXXIX.

That at the time of the filing of the original complaint in this cause, plaintiff was advised by its counsel and believed in good faith that the constitution and laws of the United States secured to plaintiff and its shareholders immunity from taxation by or under the authority of the state on its shares of preferred stock hereinbefore described, and on the assets represented by said preferred stock, said assets being acquired by and from the money paid to it by the Reconstruction Finance Corporation of the United States of America, as the purchase price of said preferred stock, and that in said original complaint plaintiff, on behalf of itself and as the agent and trustee of its shareholders, expressly claimed such immunity.

That plaintiff in said original complaint further claimed immunity from such taxation under the exemption granted to said property by Section 2 of Article IX of the Arizona Constitution hereinbefore set forth, and likwise claimed that the taxes sought to be enjoined

by it in said original complaint were illegal and void, because of discrimination against it made by the assessing officers in violation of the Constitution of Arizona, and the Act of Congress permitting and limiting the taxation of shares of stock of national banks.

That after the filing of the original Bill of Complaint in this cause, to-wit, on or about the 3rd day of February, 1936, the Supreme Court of the United States determined and decided that the immunity from taxation under the Constitution and laws of the United States of the shares of preferred stock of National banks held by the Reconstruction Finance Corporation, had been waived by the Congress of the United States giving its consent to the taxation of shares of stock of national banks.

That while said original complaint remained pending on plaintiff's claim of the exemption of the taxes sought to be enjoyed under Section 2 of Article IX of the State Constitution, and plaintiff's claim of discriminatory assessment violating the Constitution of the State of Arizona, and plaintiff's claim of the violation of the Acts of Congress permitting and limiting the assessment of shares of stock of national banks on or about the 20th day of March, 1936, the Congress of the United States passed an act which was signed by the President on the same day, expressly declaring that preferred stock of national banks held by the Reconstruction Finance Corporation of the United States, should be exempt from all taxes, whether theretofore or thereafter assessed or levied. That the major por-

tion of the taxes, the collection of which the plaintiff seeks to enjoin in this case, falls clearly within the terms of said last mentioned Act of Congress as taxes theretofore assessed and levied, and which have not been paid. That the Reconstruction Finance Corporation, the holder of the shares of preferred stock of the plaintiff against which the major portion of the taxes herein sought to be enjoined has been levied, immediately gave notice to the plaintiff to refuse payment of all taxes heretofore or hereafter assessed or levied against the preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation. That the whole of the $1,240,000.00 par value of the shares of stock attempted to be assessed for taxes as hereinbefore alleged, is and at all times hereinafter mentioned has been owned by said Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, and also under the decision of the Supreme Court of the United States, made February 3, 1936, the major portion of the illegal taxes, the collection of which is sought to be enjoined in this case, is levied and assessed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation, and is payable only by the plaintiff as the statutory agent for such preferred shareholder, and if plaintiff pays such taxes, the same cannot be deducted from its general assets, nor can the same be deducted from the dividends to its common shareholders, but under the said Sections 3069 and 3070, of the Revised Code of 1928, the same

are required to be deducted from the dividends on the preferred stock of the Reconstruction Finance Corporation.

That under the provisions of the Act of Congress, which became a law on March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct said taxes from the dividends payable on the preferred stock held by it.

That the plaintiff is informed and believes, and upon such information and belief states that the waiver of the exemption from taxation of the property owned and held by an instrumentality of the United States, such as the Reconstruction Finance Corporation, is within the control of congress and can be granted or withheld at the pleasure of congress, and that when the privilege theretofore extended to the several states and the counties and municipalities thereof to tax such shares of preferred stock owned and held by such instrumentality of the United States was withdrawn by congress as to all taxes, whether theretofore or thereafter levied or assessed, the effect of the withdrawal of such privilege was to prevent and preclude absolutely the payment of any such taxes by the Reconstruction Finance Corporation, and that plaintiff is further informed and believes, and upon such information and belief states that said Act of Congress is valid, both as to taxes hereafter to be levied and assessed and taxes heretofore levied and assessed, and that if plaintiff is required to pay said taxes to the respective counties which are

parties defendant hereto as the agent of the Reconstruction Finance Corporation, as its preferred shareholder, it will be unable to reimburse itself for such payment from the Reconstruction Finance Corporation, and that by reason of the foregoing facts the collection of said taxes on its preferred shares of stock will compel the plaintiff to pay out of its own funds, taxes assessed against the property of another in contravention of the due process clause of the Constitution of the United States and the Constitution of the state of Arizona, and that plaintiff herein and hereby expressly claims the right, privilege and immunity under the constitution and laws of the United States, of not being subjected to the payment of such taxes of its preferred shareholder, which it will be unable to collect from such shareholder.

WHEREFORE, PLAINTIFF PRAYS:

1. That the assessment of plaintiff's said shares of stock, and the assessment of property owned and held by the plaintiff, made by the county assessors of the several counties parties hereto, for the purpose of state, county, school district and other local taxation, (except City of Phoenix taxes) for the year 1935, as aforesaid, be decreed to be illegal and void and without any force or effect whatsoever, and to be in violation and contravention of the constitution and laws of the United States and the constitution and laws of the State of Arizona.

2. That the said taxes so levied and assessed upon plaintiff's said shares of stock, or upon property owned and held by the plaintiff for the year 1935, for state, county, school district and other local taxation, (except city of Phoenix taxes) set forth, be decreed to be wholly illegal and void. That any taxes which may hereafter be levied or assessed upon plaintiff's shares for said purposes for the year 1935, and based and computed upon said illegal and void assessment, likewise be decreed to be wholly illegal and void.

3. That the apparent lien resulting, and any apparent lien which may hereafter result from the levy and assessment of said taxes on plaintiff's said shares of stock, or on property owned and held by the plaintiff as aforesaid, be decreed to be wholly illegal and void, and without any force or effect whatsoever.

4. That the respective county treasurers, defendants herein, be directed to receive and accept from the plaintiff the respective sums of money heretofore offered and tendered to them, or such other sums as the court may find to be justly due and owing from the plaintiff and its shareholders to said county treasurers for taxes for the year 1935, levied or assessed against plaintiff's said shares of stock, or property owned and held by the plaintiff for state, county, school district and local taxes, for the year 1935, in full satisfaction as and for taxes levied and assessed for said purposes against plaintiff's said shares of stock for the year 1935.

5. That it be adjudged and decreed that plaintiff's shares of preferred stock, and property of the plaintiff represented thereby, is wholly immune and exempt from taxation by or under the authority of the State of Arizona, so long as said shares of preferred stock are owned and held by the Reconstruction Finance Corporation of the United States of America.

6. That if this court should be of the opinion that the Act of Congress adopted March 20, 1936, withdrawing the privilege of taxing shares of preferred stock of national banks owned and held by the Reconstruction Finance Corporation from the several states, cannot be given effect as against taxes levied and assessed prior to the adoption of said Act, that in that event this court order and decree that until it be adjudged and determined by the court of last resort that said taxes against the shares of preferred stock held by the Reconstruction Finance Corporation are collectible from said corporation, plaintiff be protected against the collection thereof by the respective county treasurers who are parties to this suit, upon the ground that to compel the plaintiff to pay the obligation of another, when its right to reimburse itself for that payment from the true debtor is doutful, will be to deprive the plaintiff of its property without due process of law, and that on said ground the collection of said taxes be enjoined until the proper construction and effect of said Act of Congress be finally determined.

7. That a temporary and interlocutory injunction

issue out of and under the seal of this court, directed to the defendants, and each of them, commanding them and each of them, and each of their deputies, assistants, agents, servants, employees, attorneys, and successors in office, to desist from collecting or attempting to collect the whole or any part of said illegal and void taxes so levied or assessed, or which hereafter may be levied or assessed upon plaintiff's shares of stock, or upon property owned and held by the plaintiff for the year 1935, as aforesaid, or any penalty or interest thereon, either by distraint or sale, or by suit or sale, or issuance of deliquent tax certificates or otherwise, and to desist from instituting, conducting or causing to be instituted or conducted, any proceedings to enforce the payment of the whole or any part of said illegal or void taxes, or of said penalties, charges or interest, or to enforce or foreclose any apparent lien resulting from the levy and assessment of said taxes as aforesaid, or from advertising or offering plaintiff's said shares, or any part thereof, for sale for the purpose of collecting or attempting to collect said taxes, penalties, charges or interest, or from issuing or delivering any tax certificate or certificates to any pretended purchaser or purchasers of said property, or any part thereof, or otherwise, by reason of or resulting from said illegal or void taxes so levied or to be levied as aforesaid, and from assessing or pretending to assess or to approve the assessment of plaintiff's said shares for the purpose of state, county, school district and other local taxation in the year 1935,

or in any similar manner, or any similar method, and from levying or assessing upon or against plaintiff's said shares in the year 1935, or in any succeeding year, any tax or taxes based or computed upon any such pretended assessment, and from collecting or attempting to collect any such taxes, said temporary or interlocutory injunction to remain in full force and effect until the final hearing of this cause; that upon said hearing, said injunction be made permanent.

8. That plaintiff have such other and further relief as the nature of the case may require, and as to the court may seem meet and equitable, and also a decree for its costs herein.

CHARLES L. RAWLING
J. L. GUST
RAWLINS AND RAWLINS
GUST ROSENFELD DIVELBESS
ROBINETTE & COOLIDGE

Solicitors for Plaintiff.

STATE OF ARIZONA,)
County of Maricopa,) ss.

J. L. GUST, being first duly sworn on oath deposes and says:

That he is one of the attorneys for The Valley National Bank, of Phoenix, a corporation, the plaintiff named in the above and foregoing Second Amended and Supplemental Bill of Complaint, and is duly authorized to make this verification on behalf of said plaintiff;

That he has read said complaint, and that the allegations therein contained are true of his own knowledge, except such allegations as are made upon information and belief, and those allegations he believes to be true.

J. L. GUST

Subscribed and sworn to before me this 24th day of April, 1939.

ETHOL FROST
Notary Public.

My commission expires February 27, 1940.

(NOTARIAL SEAL)

Supreme Court of the United States

October Term, 1939

Original No.....

Ex Parte:

In the Matter of Wallace S. Bransford as County Treasurer of Pima County, Arizona, and ex-officio Tax Collector.

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

J. MERCER JOHNSON
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Attorneys for Petitioner.

PIMA TUCSON

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Supreme Court of the United States

October Term, 1939

Ex Parte:

In the Matter of Wallace S. Bransford as County Treasurer of Pima County, Arizona, and ex-officio Tax Collector.

No.....

BRIEF ON ORIGINAL APPLICATION OF PETITIONER FOR WRIT OF MANDAMUS

STATEMENT OF JURISDICTIONAL GROUNDS

This is a petition for a writ of mandamus directed to the Judge of the United States District Court for the District of Arizona, and said Court, that said Judge do call in two additional judges for the purpose of constituting the statutory court provided for by Section 266 of the Judicial Code, Title 28, U. S. C. A., Section 380.

The suit in question is one brought by the Valley National Bank of Phoenix, Arizona, a national banking association, against the members of the State Tax Commission and the State Board of Equalization of Arizona, and four counties of that State, together with the officials of those counties who are empowered to levy and collect taxes, to restrain the collection of state and county taxes for the year 1935 which plaintiff's

complaint alleges were unconstitutionally levied against the plaintiff and its shareholders. There is no claim of jurisdiction on the basis of diversity of citizenship. Upon the filing by the plaintiff of its Second Amended and Supplemental Bill of Complaint and its making an application seeking a temporary injunction against the collection of such taxes, the petitioner and other defendants requested the District Court and Judge to call in additional judges pursuant to the statute mentioned to hold the hearing. This request was denied, the District Judge ruling that it was not a three judge matter.

As will more definitely appear hereafter in the Statement of the Case, your petitioner, as County Treasurer of Pima County, Arizona, and ex-officio Tax Collector is and was as to 1935 taxes charged by law with the duty of collecting both the state and county taxes challenged by plaintiff.

The question raised is jurisdictional to such an extent that a court may, in a pending case, of its own motion, consider the question. That being true, the petitioner here is in a position to raise the question and it seemed unnecessary to have the other defendants join.

Should the petitioner's contention that the case mentioned is an appropriate one for a three judge court be sound, there would be no appeal either to the Circuit

Court of Appeals or to this Court from any judgment rendered by a single judge. In such circumstances the right to the writ of mandamus is recognized.

Section 234, Judicial Code,
Title 28, U. S. C. A., Section 342.
Stratton v. St. Louis S. W. Ry. Co.,
282 U. S. 10,
75 L. Ed. 135,
51 Sup. Ct. Rep. 8.

The importance of an early and full consideration of the question is emphasized by the recent decision holding that the action of this court on an application for a writ of mandamus concludes the question.

Everglades Drainage District v. Florida Ranch, etc., Corp., (C.C.A., Fla.)
74 F. (2d) 914.

STATEMENT OF THE CASE

Section 266 of the Judicial Code (Title 28, U. S. C. A., Section 380) provides, so far as is material to this petition, as follows:

"No interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative

board or commission acting under or pursuant to the statutes of such State, shall be issued or granted by any justice of the supreme court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the supreme court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the supreme court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of such three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the supreme court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges; provided, however, that one of such three judges shall be a justice of the supreme court or a circuit judge."

The State of Arizona raises revenue to defray the expense of the state and county governments by, in addition to other methods, taxes levied upon real and tangible personal property. At the head of the system is the State Tax Commission, the members of which also constitute the State Board of Equalization. This Board has supervisory power and control over the county taxing officials in the matter of valuations and it also fixes the rate deemed necessary for the collection of revenues for state purposes. In the counties, the

County Assessor makes the original valuation of real and tangible personal property (with exceptions not necessary here to be noted) upon which levies for state and county taxes are laid, and the statutes give the taxpayer an appeal to the County Board of Supervisors which is also the County Board of Equalization. As its name indicates, it has the power to equalize taxes and control valuations subject to revision by the State Board. When taxes finally come to be fixed, the County Board determines the rate to be charged for county revenues and adds thereto the state rate fixed by the State Board. The tax roll is ultimately made and sent by the County Board to the County Treasurer who proceeds to the collection of both the state and county taxes, having power of distraint for that purpose. The property of corporations generally is taxed as above stated but in the case of banking corporations, national and state, the method of taxation is special in the particular that the shares of stock in, rather than the property of the corporation, are the subject matter of the levy. In other particulars, including valuation, reviews by the county boards and the State Board of Equalization, the levy for state and county purposes and the collection by the County Treasurer and ex-officio Tax Collector of both state and county taxes, the method is the same. The applicable statutes governing the taxation of shares of stock of banking corporations appear in the 1928 Code, amended as indicated, as follows:

"Section 3069. Assessment of property and shares of stock in corporations; banking, building and loan associations or corporations, and finance corporations. The property of corporations shall be assessed and taxed and no assessment shall be made of the shares of stock of corporations, nor shall any holder thereof be taxed for such shares. The foregoing provision shall not apply to a banking corporation, building and loan associations or corporations, and a corporation or association engaged in the business of using money wherewith to make money for the owners of its shares, the shares of stock of which shall be assessed and taxed as other property, in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of, and be payable by, such corporation or association." As amended by the Session Laws of 1931, Chapter 110, Section 1.

"Section 3070. Statement to assessor by banking corporation and shareholders; tax payable by corporation. Upon the demand of the assessor, the officers in charge of any such banking corporation or such corporation or association engaged in the business of using money wherewith to make money, shall make out and deliver to said assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him; the surplus, reserve fund, and undivided profits; and the par and marked value of the shares. The full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return made

to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources. Every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so, the assessor shall list and assess such unrendered shares as other unrendered property. The taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same."

"Section 3071. Situs of stock; where tax payable. Every such corporation or association, for the purpose of said assessment, shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office. The officer of such corporation or association shall state in his statement if his association or corporation is subject to taxation in more than one county, city or town, and the proportion of its assets situated in each thereof. The shares of such corporation or association shall be taxed in each county, city or town for only such portion of their value as the assets situated in that county, city or town bear to the assets of the entire

corporation or association. *When a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.*"

(Petitioner's Italics)

It will be noted from the Second Amended and Supplemental Complaint (an exhibit to the petition) that the plaintiff did maintain a branch or branches in each of the four counties made parties defendant. It is there alleged: that the bank in each of said counties made and delivered to the County Assessor the sworn statement required by the statute (Paragraph VII. See pages 22, 23 of the petition filed); that the Assessor for Maricopa County in his valuations erroneously included the sum of $1,200,000.00 "being the par value of the preferred stock of plaintiff issued to and owned and held by the Reconstruction Finance Corporation" (Paragraph XII, pages 26, 27); that in the County of Mohave the County Assessor erred in that he did not deduct from an otherwise proper calculation 25% thereof as previously directed by the State Tax Commission (Paragraph XIX, page 41); that the Assessor of the County of Pima erroneously valued the stock of theplaintiff apportionable to his county at an amount

equal to the value of the real and tangible personal property therein and that a similar error was committed by the Assessor of Graham County. (Paragraphs XIII, XVI and XVII; pages 28, 32 and 34.)

Allegations are made to the effect that the plaintiff did protest against the valuations fixed by the Assessors in the several counties to the County Boards of Equalization, and, being denied relief there, did subsequently unsuccessfully protest to the State Board of Equalization against such valuations, the result being that in each instance the original valuations were extended to the taxation rolls for the collection of both state and county taxes by the respective County Treasurers. (Paragraph XXII, page 43.)

The ground on which the plaintiff claims that the alleged excessive taxation of its stock in Maricopa County is void is that to the extent of such excess it constituted a taxation of its preferred stock while in the hands of the Reconstruction Finance Corporation, alleged to be exempt from state taxation by virtue of the retroactive feature of the Act of Congress of March 20, 1936, Chapter 160, Title 12, U. S. C. A., 51-D, an enactment passed after the taxes in this case were levied and subsequent to the filing of the original complaint. (Paragraph XXXIX, page 68.)

The alleged overvaluation made by the Mohave County Assessor, and confirmed by the several reviewing boards, is attacked on the basis of discrimination

against the plaintiff and in favor of other property owners.

While the four counties and their taxing officials are joined in this suit, whether appropriately or not, there are really four independent claims made, identical so far as Pima and Graham Counties are concerned, but otherwise variant. Whether the suit as to the County Treasurers and ex-officio Tax Collectors of Maricopa and Mohave is such as to require the calling of two additional judges or not, it is submitted that so far as the application for a temporary injunction against the County Treasurer of Pima County and ex-officio Tax Collector, your petitioner herein, is concerned, the case falls within the terms of the section in question.

The complaint alleges that the valuation in Pima County (and Graham County) is void, notwithstanding it appears to have been in strict conformity with the last sentence of Section 3071 of the Arizona Code, on a number of grounds, some of which at least attack the constitutionality of the statute. The complaint emphasizes the fact that the taxing officials of Pima County in fixing the taxes for 1935 and after years, did take and continue to take the position that they have the right to place the valuation of the stock in the plaintiff at an amount not less than the actual value of the real and personal property of the bank situated in such counties—that is, follow the mandatory requirement of Section 3071. (Paragraph XXXIV, page 64.)

The reasons given, summarized, why such method

is void, are found in paragraph XVIII. It is averred that, if the assessments in Pima and Graham Counties are to be construed as assessments and valuations of the property owned by the bank, as distinguished from the shares of stock in the bank, such assessments are void for the reason that the statutes of Arizona, as construed by the Supreme Court of Arizona, provide for the taxation of the shares of stock only. This, of course, raises no federal question.

Nor may the pleader reasonably claim that such assessments could possibly be considered as an effort to tax the real and tangible personal property of the bank in Pima County. As we have already shown, the complaint alleges that the bank filed the lists of its stockholders as required by the statute, and additional allegations are in the complaint to the effect that the taxes in question are a lien on the property of the common stockholders. (Paragraph XXX, page 52.)

Next, in Paragraph XVIII, it is said that the taxes levied by these two counties are void if they are to be construed as assessed against the common and preferred stock of the bank, inasmuch as there is no segregation of the taxes as between the two classes of stock and none is possible.

We think there is nothing in the allegations of fact in the bill to justify pleading on the assumption of the possible construction of the taxes in these two counties as declared levies on the preferred stock of the bank.

The paragraph in question (Number XVIII) then proceeds to the real nub of the suit and avers that if the taxes levied in the two counties mentioned are construed as assessments on the common stock of the bank, and that is truly what they are, then they are void for five numbered reasons: (Pages 38-40.)

1. In so far as the valuation fixed exceeds what the plaintiff claims is the correct amount, it is alleged to be a tax upon the exempt preferred stock of the bank;

2. The valuation is excessive;

3. The valuation in said two counties of the stock in the plaintiff are twice those in the case of banks which have issued no preferred stock and are consequently discriminatory;

4. The valuations are discriminatory in that they are greater than those fixed for other classes of property; and,

5. The valuations in said two counties are in violation of Title 12, U. S. C. A., Section 548, in that they are greater than like taxes on other moneyed capital in the hands of individual citizens of Arizona.

These are attacks on the "valuations" on the basis of the due process and equal protection clauses of the 14th Amendment and Acts of Congress.

The prayer (1) is that the court decree the assessments made in the various counties as in violation of the Constitution and Laws of the United States and the Constitution and Laws of the State of Arizona; and

(7), that a temporary and interlocutory injunction issue against the defendants restraining them from the collection of the said taxes and that it be made permanent on final hearing.

ARGUMENT

It is submitted that every element essential to the creation of the statutory court under Section 266 of the Judicial Code is present.

There is an application for an interlocutory injunction to a district judge and court. It is being pressed for consideration.

The action of an *officer of the State* of Arizona is sought to be restrained. This is true even if we disregard the defendants who are members of the State Board of Equalization as unnecessary parties. County Treasurers are ex-officio tax collectors of state taxes as well as county taxes and, so far as taxes of the kind here involved are concerned, are the only tax collectors. This appears from the allegations of the pleading. (Paragraphs XXIV, XXV, et seq, pages 44, 45.)

Sections 3110 and 3111 of the 1928 Revised Code of Arizona provide:

"Section 3110.

The county treasurer shall be ex officio tax collector. * * *"

"Section 3111.

The county treasurer as tax collector shall col-

lect all state and county taxes and apportion the same to the several funds at the end of each month. * * * "

See: Spielman Motor Sales Co. v. Dodge,
295 U. S. 89,
79 L. Ed. 1322,
55 Sup. Ct. Rep. 678.

The case of Ex Parte Collins,
277 U. S. 565,
72 L. Ed. 990,
48 Sup. Ct. Rep. 585,

is distinguishable because there the assessment the collection of which was sought to be enjoined was for the purpose of raising revenues in which the state had no interest.

An interlocutory injunction is sought to restrain the *enforcement, operation or execution of Sections 3070 and 3071*, particularly the last sentence of Section 3071. This sentence requires that the value of the bank stock shall be apportioned to the several counties where it maintains branches and "shall not be less than the cash value of the real and personal property of such bank situated in such county." As pointed out above, the pleading alleges that the taxing officials in fixing the valuations in Pima and Graham Counties for the year 1935 took the position, and intend to continue so to do, that they have the right to fix the valuation as indicated in the language quoted. (Paragraph XXXIV, page 64.)

An injunction against the collection of the taxes so assessed in Pima and Graham Counties will prevent the statute from operating. The language of the statute is mandatory and the taxing officials may not value the property in a sum less than that determinable by the prescribed test. Should the court uphold plaintiff's contention and fix valuations of the stock as plaintiff claims they should be, the statute would certainly appear to be suspended. The effect of an injunction will be to direct this petitioner to disobey a statute he has sworn to uphold. The plaintiff is not asking for a three judge court and could not be expected to draft its bill so as to make all the elements necessary to a court of that character unmistakably clear. But it is submitted that the conclusion is inescapable that the purpose of the application is to bring about the suspension and restraining of the enforcement, operation and execution of the Arizona statute.

The three judge statute has been held applicable to a variety of state statutes and orders of state administrative boards and commissions. If the statute is properly applicable to cases involving statutes fixing rates,

Stratton v. St. Louis S. W. Ry. Co.,
282 U. S. 10,
75 L. Ed. 135,
51 Sup. Ct. Rep. 8,
Oklahoma Natural Gas Co. v. Russell,
261 U. S. 290,
67 L. Ed. 659,
42 Sup. Ct. Rep. 353,

prescribing crimes,

Spielman Motor Sales Co. v. Dodge,
295 U. S. 89,
79 L. Ed. 1322,
55 Sup. Ct. Rep. 678,

or undertaking to protect citizens in their employment,

Raich v. Truax,
219 Fed. 273,
Affirmed ,239 U. S. 233,
60 L. Ed. 131,
36 Sup. Ct. Rep. 7,

it would seem clear that it is likewise applicable where a temporary injunction is sought against the exercise by the state of the very high power of taxation.

> "It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible."

Boise Artesian Hot & Cold Water Co. v. Boise City,
213 U. S. 276,
53 L. Ed. 796,
29 Sup. Ct. Rep. 426.
Chicago Great Western Ry. Co. v. Kendall, infra.

And it has been applied to tax cases:

Chicago Great Western Ry. Co. v. Kendall,

266 U. S. 94,
69 L. Ed. 183,
45 Sup. Ct. Rep. 55;
Rast v. Van Deman Co.
240 U. S. 342
60 L. Ed. 679
36 Sup. Ct. Rep. 379;
Norfolk & Western R. Co. v.
Board of Public Works,
3 Fed. Supp. (3 Judge case) 791;
See, generally,
annotation 78 L. Ed. 1092,

We think this case is distinguishable from
Ex Parte Williams,
277 U. S. 267,
72 L. Ed. 877,
48 Sup. Ct. Rep. 523,

where the complaint of the taxpayer was that the taxing authorities had systematically and intentionally discriminated against it. No statute of the state was directly or indirectly attacked as unconstitutional and the action of the taxing officials in fixing the assessment was held not to be an "order" within the meaning of Section 266. Whether this case is entirely consistent with others by this court, see particularly Oklahoma Natural Gas Co. v. Russell, supra, may be open to question, but it would not appear to be controlling where, as here, the assessment was made pursuant to and in an amount required by the express and mandatory language of a state statute, and the petitioner as

state tax collector was about to proceed to enforce the statute by collecting the resulting tax.

Section 266 has the double purpose of providing for a hearing before a court equipped to give the matters involved more adequate consideration than might be expected from a single judge and for an appeal directly to the United States Supreme Court so as to minimize delay. Cases involving the collection of state taxes would certainly seem to be within the intendment of the statute as defined by the court in Stratton v. St. Louis S. W. Ry. Co., supra. No interference with the exercise of state power could be "graver" than an injunction against the collection of taxes needed to carry on the state government.

If the plaintiff in this case, desiring a three judge court, had challenged the valuations for the collection of state and county taxes established pursuant to the last sentence of Section 3071 in Pima and Graham Counties on the ground that the statute under which the officers acted was unconstitutional, there would, we think, be no serious question of the applicability of Section 266 of the Judicial Code. No such directness of expression appears in the pleading before this Court but we submit that it makes that attack. The right of the defendants to have a three-judge court ought not to depend upon the plaintiff's choice of phraseology.

The complaint is not susceptible of the interpretation that the statute is valid but that the officials, under its guise, have systematically and intentionally discriminated against the plaintiff. It may be that under

Ex Parte Williams, supra, there is basis for denying the application of Section 266 in such a situation. Be that as it may, we have a case here where the state statute and the valuation fixed in Pima and Graham Counties for collection of state and county taxes are identical in scope. If the "valuation" or assessment, call it what you may, is void, and taxes may not be collected thereon, it is only because the statute is void. One cannot be valid and the other invalid.

If the statute does not apply here, it would seem that it may never apply in cases involving the collection of taxes on the basis of ownership of property.

Attention is called to the fact that the members of the State Tax Commission and the State Board of Equalization are parties defendant and that the plaintiff requests an injunction against them. These officials are clearly state officials although the actual collection of state, as well as county, taxes is in the hands of the County Treasurers. Should the plaintiff's contentions that the taxes are void be upheld, some different apportionment among the counties than that approved and directed by such defendants will have to be ordered. The Court is surely not bound to accept the apportionment that the plaintiff submits in its pleading, and we question whether the federal court can sit as an equalization board. Perhaps they are joined as defendants so that it may be decreed that they convene, reverse themselves, and establish valuations in accordance with the court's views. If so, this would

seem to be an additional reason for requiring a three-judge court.

It is respectfully submitted that a rule to show cause should be issued and that upon final hearing the necessary writ of mandamus should be granted.

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Supreme Court of the United States

October Term, 1939

Original No.....

In Parte:

In the Matter of Wallace S. Bransford, as County Treasurer of Pima County, Arizona, and ex-officio Tax Collector.

BRIEF IN RESPONSE TO RULE REQUIRING RESPONDENT TO SHOW CAUSE WHY LEAVE TO FILE A PETITION FOR WRIT OF MANDAMUS SHOULD NOT BE GRANTED.

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Supreme Court of the United States

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BRIEF IN RESPONSE TO RULE REQUIRING RESPONDENT TO SHOW CAUSE WHY LEAVE TO FILE A PETITION FOR WRIT OF MANDAMUS SHOULD NOT BE GRANTED

Conceding, generally, the correctness of the petitioner's statement of the case, subject to certain exceptions which we shall point out as we go along, it is our position that the case set forth in the exhibit attached to the petition for writ of mandamus is not a three-judge case within the meaning of Sec. 266 of the Judicial Code, for the following reasons:

1. The complaint attached as an exhibit to the petition for writ of mandamus does not state a case against state officers; and

2. Said complaint does not state a case for an injunction upon the ground of the unconstitutionality of a state statute.

Considering the first question above mentioned, we point out that the defendants are four counties of the State of Arizona, the county treasurers, county assessors and boards of supervisors of those counties, and the three members of the State Tax Commission, constituting also the State Board of Equalization of the State of Arizona. Obviously, only the last three defendants are prima facie state officers. It appears from the complaint that the State Board of Equalization and the State Tax Commission have taken no action with respect to the matters complained of. They are charged only with failure to correct the erroneous assessments upon application made to them. The complaint seeks only to enjoin the collection of taxes assessed for the year 1935, of which the assessment process has long since been completed, and the only thing that remains to be done is to make the actual collection, the duty of which rests upon the county treasurers, and against which the injunctive relief is sought. The presence of the members of the State Tax Commission and State Board of Equalization in the suit generates no interest which it is the purpose of Section 266 to protect.

Wilentz v. Sovereign Camp W.O.W.
306 U. S. 573-583
83 Law Ed. 994-1000
59 S. Ct. 709

Whether said complaint states a three-judge case within the meaning of Section 266, therefore, must be

determined with reference to the status occupied under the laws of Arizona by the county treasurers of that state. If such county treasurers are not state officers performing functions of state-wide concern the case is not a three-judge case.

Ex parte: Collins 277 U. S. 565,
72 Law Ed. 990
48 S. Ct. 585

Ex Parte: Public National Bank,
278 U. S. 101
73 Law Ed. 202
49 S. Ct. 43

Rorick v. Commissioners,
307 U. S. 208-213
83 Law Ed. 1242-1244
59 S. Ct. 808

It is argued in petitioner's brief that the county treasurers of the State of Arizona are state officers within the meaning of said Sec. 266 and the decision of this court in Spielman Motor Sales Co. v. Dodge, 295 U. S. 89, 79 Law Ed. 1322, 55 S. Ct. 678. This contention of petitioner is not substantiated by the facts. Under Article 12 of the Constitution of Arizona, a copy of which is inserted in the appendix hereto, counties of the state are bodies politic and corporate and there are created for each of said counties the offices of sheriff, recorder, treasurer, school superintendent, county attorney, assessor and county superintendent of roads, each of which are to be elected

by the qualified electors of the county and for which compensation is to be paid out of the county treasury In Secs. 760 and 761 of the Revised Code of Arizona, 1928, each county is declared to be a body politic and corporate and its powers are prescribed. Among these are the power to sue and be sued and the power to levy and collect taxes. In Secs. 823, 824, 830 and 832 of the Revised Code of Arizona, 1928, qualifications are prescribed for county officers. Said officers are enumerated; provision is made that certain of them —among them being the county treasurer—must reside at the county seat; and that they must give bond. Among the officers so enumerated is the county treasurer, and it provided that he shall be ex-officio tax collector. Secs. 864, 873, 874, 875 and 876 Revised Code of Arizona, 1928, prescribe the duties of the county treasurer and provide for the handling of moneys by him. Among these duties is that of remitting state taxes collected by him to the State Treasurer. The text of the statutory provisions herein referred to will be found in the appendix at the end of this brief.

From said provisions it is clear that the county treasurer under the Arizona statutory system is a county officer elected in his county, required to reside therein, paid his salary by the county, and exercising no powers outside of his county. Among his duties, however, is that of collecting taxes in his county, not only for county purposes but for state, municipal and school district purposes.

It has been mentioned above that Sec. 876 Revised Code of Arizona, 1928, requires the county treasurer to transmit state taxes collected to the State Treasurer. Other sections of the same code require him to handle and dispose of school district money and still other sections of said code provide for the handling of money of cities and towns, except those having special charters. But, nowhere in the law, is there any provision designating him as an officer of any of the legal entities whose tax money he collects except that he is designated as county treasurer and ex-officio tax collector, and in the case of irrigation districts he is expressly made ex-officio treasurer for the districts by Sec. 3363 Revised Code of Arizona, 1928. Petitioner's assertion that the county treasurer is ex-officio a tax collector for state taxes is not supported by the statutes of Arizona. Sec. 3110 Revised Code of Arizona, 1928, declares him to be county treasurer and ex-officio tax collector.

Under the system set up by the statutes of Arizona, the counties of the state and not the county treasurers are the tax collection agencies for the collection of all taxes within their borders, excepting only taxes collected for a few special charter cities and towns. As has been stated above, the Constitution constitutes counties bodies politic and corporate and consequently they possess the legal capacity to be vested by law with the power of levying and collecting taxes and by statute they are granted the exercise of that power

over all taxes to be levied and collected within their respective borders.

Taxes collected from the taxpayer by the counties are collected by them in a lump sum of which a part is for the state, a part for the county and a part for the school district and if the property assessed is in a city or town, a part is for the city or town. The money so collected becomes public money of the county.

Jarvis v. Hammons,
32 Ariz. 318
257 Pac. 985

The statutes provide for adjustment of accounts between the state and the county. If illegal taxes are collected, the suit to recover them is against the county as such and the judgment for their recovery goes against the county and becomes a judgment on an equality with other like obligations of the county. This is settled by the decisions of the Supreme Court of Arizona.

County of Maricopa v. Hodgin,
46 Ariz. 247-255
50 Pac. (2d) 15

Powell v. Gleason,
50 Ariz. 542, 550
74 Pac. (2d) 47

Note the following language in the case of County of Maricopa v. Hodgin, supra, page 252 Ariz. Report:

> "Under the law the county is constituted the agent of the state to collect the taxes for the state, the county, and school districts."

And in Powell v. Gleason, supra, page 550, Ariz. Report the following:

> "In the chapter now under consideration, the taxes involved are paid to the county assessor, rather than to the county treasurer, but we think the difference is immaterial. Ad valorem property taxes are usually collected by the counties through their county treasurers, and then distributed in the manner provided by law. We think, in reason, the section applies to such taxes when collected by the county assessor, as well as by the treasurer, since in both cases it is the county, in effect, which receives the taxes, though through different officers, and a suit to recover the tax illegally collected is brought against the county."

And in Jarvis v. Hammons, supra, page 320, Ariz. Report the following:

> "The various organizations within the county for whose benefit taxes are collected by the county treasurer, hold the same relation to the county that depositors hold to their bank. The money deposited loses its identity, and the bank becomes debtor to the depositor."

There can be no doubt that under the above authoritative declarations of the Supreme Court of Arizona,

the counties are tax collectors for the state and the county treasurer is merely an officer of the county exercising his duties within the county and for the county.

The facts above stated sharply differentiate this case from the case of Spielman Motor Sales Company v. Dodge, 295 U. S. 89-97, 79 Law Ed. 1332, 55 S. Ct. 678. In that case this court stated that in determining the application of Sec. 266, this court must have regard to both the nature of the legislative action which is assailed and to the function of the officer sought to be restrained. The court considered the status of the district attorney under the laws of New York and found that he was deemed a part of the judicial system of the state and performed within his county a distinctively state function. He was sought to be restrained in the particular case from enforcing a statute embodying a policy of state-wide concern. He was not enforcing such statute on behalf of the county nor in the performance of any function that the county was required to perform under the state statutes.

We think the case now before this court in its relation to Sec. 266, is like the case of ex parte Collins, supra. In that case the state by a general law delegated its power to improve highways within city limits to the respective cities. It was sought to restrain the officials of the City of Phoenix from exercising this delegated power upon the ground that the general state

law delegating this power was unconstitutional. This court held that officials who merely exercised power delegated by the state to a municipality to be exercised only within the municipality, were not state officers but were merely local officers and, hence, no three-judge case was presented.

In this case, the state by general law has delegated the power of collecting taxes within the counties to the respective counties, and it is sought to enjoin the collection of those taxes by an officer of the county.

In line with the principle of the Collins case, this court must hold that an officer of the county is not a state officer when he, as such officer of the county, exercises a state power delegated to his county.

The case is different from the case of Spielman v. Dodge, supra, in that in said Spielman case, the power of enforcing the state law was vested in the district attorney by the state law, while in this case, the power of collecting the taxes is vested in the county by the state law, and hence, the county officers in exercising the power, merely act for and on behalf of the county.

This case differs from the Spielman case also in that in the Spielman case, it was sought to enjoin the enforcement of a statute embodying a policy of state-wide concern. In this case it is not sought to enjoin the enforcement of a state statute but merely to enjoin the enforcement of assessments levied by four

counties in pursuance of a policy adopted by only four of the eight counties in which the bank does business. (Exhibit attached to petition Par. XI, page 26). Obviously this policy of these four counties of endeavoring to collect taxes either directly or indirectly imposed on preferred bank stock held by Reconstruction Finance Corporation, which is responsible for this litigation, is not a policy of state-wide concern in Arizona, but is a policy in a few counties only. Hence, the case is not a three-judge case.

Rorick v. Commissioners,
307 U. S. 208-213
83 Law Ed. 1242, 1244
59 S. Ct. 808.

The precise question as to whether a county treasurer who collects state taxes, together with county and other local taxes, is a state officer, does not appear to have been passed on by this court. It was mentioned but found unnecessary to be decided in ex parte: Williams, 277 U. S. 267, 72 Law Ed. 877, 48 S. Ct. 71. The question, however, has been passed on in a number of instances by the lower Federal Courts, and in some of those cases this court has inferentially approved the decision of the lower court by its failure to mention the subject.

In re Henrietta Mills Co. v. Rutherford,
26 Fed. (2d) 799
281 U. S. 121
74 Law Ed. 737,
50 S. Ct. 270

Pleasant v. Missouri, etc. R. Co.,
66 Fed. (2d) 843 (Writ of certiorari denied,
291 U. S. 659, 78 Law Ed. 1051, 54 S. Ct. 376)

Schermerhorn Inc. v. Holloman,
74 Fed. (2d) 265, 266, (Writ of certiorari denied
in 294 U. S. 721, 79 Law Ed. 1253, 55 S. Ct. 548)

Connecting Gas Company v. Imes,
11 Fed. (2d) 191-195.

The above cases arose under the statutes of North Carolina, Kansas, Oklahoma and Ohio. In North Carolina the restraining order was sought against the sheriff who collects county taxes and some state taxes. In each of the other three states mentioned the restraining order was sought against the county treasurer who collects state, county and other local taxes under statutes very similar to the statutes of Arizona, (Kansas 1935 Code Sec. 79-2201, Oklahoma Stat. Ann. Title 19, Sec. 625, and Title 68 Secs. 252 and 295, Pages Ohio General Code, 1937 Secs. 2688 and 2692.) In all of the above cases it was held by the lower courts that the local tax collecting officers were not state officers. See note 83 Law Ed., page 1195.

It is also clear that the complaint which is attached as an exhibit to petitioner's motion for writ of mandamus is not based upon the unconstitutionality of a state statute and, of course, no administrative order is involved. The complaint states a suit to enjoin the enforcement of an assessment (Exhibit attached to

petition Par. XXXIX, pages 68-72), which is not an administrative order.

Gulley v. Inter-State National Gas Co.,
299 U. S. 16, 18
78 Law Ed. 1088,
54 S. Ct. 565

Nowhere in the complaint is there any charge of unconstitutionality of any state statute. The complaint alleges that the Maricopa County assessment is a direct assessment of preferred stock of the bank held by Reconstruction Finance Corporation (Exhibit attached to petition Par. XII, pages 26-27). Therefore, the collection of said assessment is in violation of the act of Congress of March 20, 1936, (U. S. Code Ann. Title 12, Sec. 51d, page 124, 125) prohibiting the assessment or collection of taxes on preferred stock of banks held by Reconstruction Finance Corporation, and also in violation of Sec. 2 of Article IX of the Arizona State Constitution. No Statute of the state attempts to provide for the assessment of taxes upon shares of preferred stock of banks held by Reconstruction Finance Corporation. The assessments in Pima and Graham counties, Pima being the county of which the petitioner is the treasurer, was made upon a different basis. The assessments are set forth verbatim in the complaint (Exhibit attached to petition, Par. XIII and XVI, pages 28 and 31) and it appears therefrom that they are mere assessments to the bank of the real and personal property owned by the bank

in the respective counties. Hence, the assessments are in violation of the Secs. 3069 and 3071 (see pages 6 and 7 of Petitioner's Brief), Revised Code of Arizona, 1928, and void.

Gibbons v. White,
47 Ariz. 180,
54 Pac. (2d) 555

The complaint shows, further, that if the assessments in Pima and Graham counties are construed as assessments of the preferred and common stock of the bank they are not in compliance with the statutes of Arizona and are also in violation of the act of Congress of March 20, 1936, prohibiting the assessment of shares of preferred stock and the constitution of the State of Arizona (Exhibit attached to petition, Par. XVIII, pages 36-37) and that if said assessments are construed as assessments of the shares of common stock of the bank, they are discriminatory assessments (Exhibit attached to petition, Par. XVIII, pages 37-40) and also in violation of the Federal Act permitting the assessment of shares of stock in National Banks (U. S. Code Ann. Title 12, Sec. 548, page 604). But petitioner states in his brief that, obviously, the assessment in Pima County is an assessment upon the shares of common stock. This assertion is a far stretch of the imagination. It appears to be an assessment of property to the bank (Exhibit attached to petition, Par. XIII, pages 28-29). The words in small type near the top, "Co-Apportionment—13,795.6 shares

of stock @ $23,7459 totalling $327,590.00" cannot be construed as an assessment of the shares of common stock of the bank for it appears that the bank has 52,000 shares of common stock of the par value of $5.00 each and 198,400 shares of preferred stock of $6.25 each, the latter being held by Reconstruction Finance Corporation (Exhibit attached to petition, Par. VI, pages 21-22). It is true, as petitioner says, the list of shareholders was filed with the assessor as required by the law, but the assessment wholly disregards said shareholders and the shares owned by them.

But, even if we should indulge in the assumption that the assessment of $327,590.00 was assessed as the value of the 52,000 shares of common stock of the bank apportionable to Pima County, still, restraining the collection of such an assessment, is not an attack upon the constitutionality of the concluding sentence of Sec. 3071 (Petitioner's Brief, pages 6, 7 and 8) of the Revised Code of Arizona, 1928. "It will be noted that Sec. 3069 provides that the shares of stock of banks shall be assessed and taxed as other property in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of and be payable by the bank, and Sec. 3071 provides that the bank shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business and the shares shall be subject to taxation in any county, city or town wherein

it has such office and, further, that the shares shall be taxed in each county, city or town for only such proportion of their value as the assets situated in that county, city or town bear to the assets of the entire bank." Then follows the concluding sentence which petitioner claims requires him to assess said bank stock at not less than the value of the real and tangible personal property owned by the bank in his county. We do not think that such is the proper interpretation of said concluding sentence. We think think this sentence simply means that the shares of bank stock shall not be assessed in any county at less than their actual cash value which is to be determined from the actual cash value of the bank's taxable property, i.e. the bank's assets in that county. The language has not been construed by the Supreme Court of Arizona but the one case in that court bordering upon the question would seem to indicate that the interpretation we have submitted would be accepted by that court.

Yavapai County Savings Bank v. State Tax Commission,
52 Ariz. 374
81 Pac (2d) 86.

But, even if we take petitioner's interpretation of the concluding sentence of Sec. 3071, the attack in this case is not upon the constitutionality thereof, but, rather, upon the failure of the assessor to recognize the exemption from taxation of values represented

by the preferred stock of the bank held by Reconstruction Finance Corporation.

It appears from the complaint that the real and personal property assessed in Pima County was acquired by the bank by the use of $400,000 of the money obtained from Reconstruction Finance Corporation by the sale of the bank's preferred stock (Exhibit attached to petition Par. XIV, pages 29-30). Thus, insofar as this case is concerned, the erroneous and excessive assessment in Pima County arises not out of the application of Sec. 3071 Revised Code of Arizona, 1928, but arises out of the failure of the assessor to give effect to the exemption from taxation of the values represented by the preferred stock. In other words, the complaint does not attack the constitutionality of Sec. 3071 but does attack the failure of the county assessor to recognize the exemption provided by the act of Congress of March 20, 1936, and such a failure is not an attack upon the constitutionality of a state statute within the meaning of Sec. 266.

Ex parte: Buder, 271 U. S. 461
70 Law Ed. 1036,
46 S. Ct. 567.

In this case as well as in the Buder case the question of whether or not the assessment is invalid depends upon the application of the act of Congress not upon the state statute for if it were not for the Federal Act the assessment in this case would not be

invalid, except as it would be in violation of the State Constitution. Unconstitutionality under the State Constitution does not give rise to a three-judge case.

Stratton v. St. Louis Southwest Ry. Co.,
282 U. S. 10-18
75 Law Ed. 135
51 S. Ct. 8.

Cook v. Burnquist,
242 Fed. 321

Recognition must be given to the fact that the trial judge, who declined to call in the additional judges, considered the questions presented, and concluded that the constitutionality of the State Act was not attacked.

Ex parte: Hobbs, 280 U. S. 168, 172,
74 Law Ed. 353,
50 S. Ct. 83.

It is settled that Sec. 266 applies only where there is a substantial claim of invalidity under the Federal Constitution.

Stratton v. St. Louis Southwest Ry. Co.,
282 U. S. 10-18,
75 Law Ed. 135
51 S. Ct. 8

City of Springfield v. United States,
99 Fed. (2d) 862

We respectfully submit that the contention that the complaint charges the unconstitutionality of Sec. 3071

Revised Code of Arizona, 1928, is not substantiated. Said contention is based upon a questionable interpretation of the statute and, even if that interpretation is admitted, the alleged invalidity of the assessment does not arise out of the statute itself, but arises out of the failure of the assessing official to recognize the Federal Statute and the State Constitution as a limitation upon or exemption from the terms of the statute and, thus, no case for a three-judge court is presented under Sec. 266.

We respectfully submit that petitioner fails to make out a case for a three-judge court for the reasons herein presented.

Respectfully submitted,

CHARLES L. RAWLINS,
J. L. GUST,
Attorneys for David W. Ling
Judge United States District Court
for the District of Arizona.

APPENDIX

CONSTITUTION OF ARIZONA

ARTICLE XII.

Section 1. Each county of the State, now or hereafter organized shall be a body politic and corporate.

Section 2. The several counties of the Territory of Arizona as fixed by statute at the time of the adoption of this Constitution are hereby declared to be the counties of the State until changed by law.

Section 3. Subject to change by law, there are hereby created in and for each organized county of the State the following officers who shall be elected by the qualified electors thereof: Sheriff, Recorder, Treasurer, School Superintendent, County Attorney, Assessor, County Superintendent of Roads, and Surveyor, each of whom shall be elected for a term of two years, except that such officers elected at the first election for State and County officers shall serve until the first Monday in January, 1913; and three Supervisors, whose term of office shall be provided by law, except that at the first election for county officers the candidate for Supervisor receiving the highest number of votes shall hold office until the first Monday in January, 1915, and the two candidates for Supervisor, respectively, receiving the next highest number of votes shall hold office until the first Monday in January, 1913.

Sec. 760. County a body corporate; name of county, corporate name. Every county is a body politic and corporate, and the name of the county designated in this chapter is its corporate name, by which it must be known and designated in all actions and proceedings.

Sec. 761. Powers. Its powers can be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law. It has the power to sue and be sued; to purchase and hold lands within its limits; to make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers; to make such orders for the disposition or use of its property as the interests of its inhabitants require, and to levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by law.

ARTICLE 7. County Treasurer

Sec. 864. Duties. The county treasurer shall: 1. Receive all money of the county, and all other money directed by law to be paid to him, safely keep, apply and pay the same and render account thereof as required by law; 2. keep an account of the receipt and expenditure of such money in books provided for that purpose; in which must be entered the amount, the time when, from whom, and on what account the money was received by him; the amount, time, when, to whom, and on what account disbursements were

made by him; 3. keep his books so that the amount received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account; 4. enter no money received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the board of supervisors; and, 5. disburse the county money only on county warrants, issued by the board of supervisors, signed by the chairman and clerk of such board, or as provided by law.

Sec. 873. Settlements monthly and annually by treasurer. The treasurer shall settle all his accounts of the collection, care and disbursement of public revenue, with the board of supervisors on the first Monday in each month. For that purpose he shall make out a statement under oath, of the amount of money or other property received, the sources from which derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He shall, in such settlement, deposit all paid warrants with the clerk of the board of supervisors, taking his receipt therefor, and the amount of the warrants so deposited shall be entered to the credit of the treasurer in his account. He shall also make a full settlement with the board of supervisors annually, on the last business day of December, and transmit a copy of his statement and make an annual report to the

state treasurer before the fifteenth day of each January.

Sec. 874. Report of receipts and disbursements at regular meetings of board. The treasurer shall make a detailed report at every regular meeting of the board of supervisors of his county, and at such other times as the board may require, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, may clearly and distinctly appear.

Sec. 875. Penalty for failure to make settlements. If the county treasurer neglect or refuse to settle or report as required by law, he shall forfeit and pay to the county, the sum of five hundred dollars for every such neglect or refusal, and the board of supervisors shall institute action for the recovery thereof.

Sec. 876. Transmitting of money to state treasurer. Upon the receipt of an order from the state treasurer requiring the money in the county treasury belonging to the state or collected for it, to be transmitted to the state treasury in the manner prescribed by law, the county treasurer shall within ten days thereafter transmit the same in the manner directed by the state treasurer, and as provided by law, and such transmittal

shall be at the risk of the state, if sent as the state treasurer directed.

Sec. 3136. Tax not to be contested unless paid; collection may not be enjoined. No person upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof, either as plaintiff or defendant, unless such tax shall first have been paid to the proper county treasurer, together with all penalties thereon. No injunction shall ever issue in any action or proceeding in any court against this state, or against any county, municipality, or officer thereof, to prevent or enjoin the collection of any tax levied. After payment an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner hereinbefore provided.

SUPREME COURT OF THE UNITED STATES.

No. —, Original.—October Term, 1939.

Ex parte Wallace S. Bransford. } Motion for leave to file petition for writ of mandamus.

[May 20, 1940.]

Mr. Justice Reed delivered the opinion of the Court.

The county treasurer and ex-officio tax collector of Pima County, Arizona, moves to file a tendered petition for a writ of mandamus to be directed to District Judge Ling of the federal district court for that state. A rule to show cause has issued and the return has been made. Petitioner, a county treasurer, and other officials are defendants together with their counties, in a suit brought in the district court by the Valley National Bank in which the Bank is seeking an interlocutory and permanent injunction against the collection of certain taxes by the counties. The district judge has ruled that he will hear the case while sitting alone and petitioner contends that under Section 266 of the Judicial Code he is entitled to have the case heard before three judges. Mandamus is the proper remedy.[1]

Arizona taxes shares of bank stock in the name of the shareholders and requires the bank to pay for them.[2] Assessments are made in the first instance by county assessors, with an appeal allowed first to a county and then to a state board of equalization. The state board returns the final assessment with a levy of the rate for state purposes to the county supervisors. This body adds the several local rates and places the assessment upon the tax roll. Collection is performed by the county treasurer,[3] and the taxes collected are apportioned between state and county.[4] Where a bank is doing business in several counties the value of its stock is apportioned

[1] Ex parte Williams, 277 U. S. 267, 269; Stratton v. St. Louis Southwestern Ry., 282 U. S. 10, 16.

[2] Revised Code of Arizona, 1928, §§ 3069-71.

[3] *Id.*, § 3110.

[4] *Id.*, § 3111.

among the counties in accordance with the assets located in each. Because other property in the state has been under-assessed the state board in 1935 ordered that bank shares be valued at 75% of capital stock, surplus and undivided profit. Assets, borrowings, deposits and other liabilities are disregarded.

The petitioner is the only defendant to apply for mandamus. As the issuance of such an order depends on the jurisdiction of the single district judge, sitting alone, over the suit pending in the district court, this is sufficient. As the issues with this petitioner in that suit include those with all other defendants, we do not need to state the issues arising with the officials of counties other than Pima. The Bank states its controversy with the petitioner arose in the following manner. The Bank had branches in several counties. It had common capital stock, a surplus and undivided profits. Also the Bank had an issue of preferred which it had sold to the Reconstruction Finance Corporation prior to the time of the 1935 assessment at the par value of $1,240,000 and which the Reconstruction Finance Corporation still owns. Taking the position that the preferred owned by the Reconstruction Finance Corporation could not be taxed, the Bank reported a total value of $524,629.50, 75% of $699,026 (the amount of its common, surplus, undivided profits and reverses), as the total taxable value of its shares, and apportioned this among the counties according to the assets there located. On this basis $139,088.80, 26.53% of its total taxable value, was apportioned to Pima County. The assessor of Pima County made an assessment of $327,590, the "actual cash value of the real and personal property" situated in Pima County. By agreement of the parties, the Bank paid the amount which under its computation was due Pima County, the right to litigate the validity of the county's assessment being reserved. Subsequently, the petitioner having threatened to institute proceedings to enforce the county's assessment, the Bank brought its suit in the district court to enjoin collection.

The Bank by its bill in the district court seeks an injunction upon several grounds. We are of the opinion that none of these compels the trial judge to call a three-judge court under Section 266.

The assessment in Pima County was made in the amount of the value of the Bank's real estate and personal property. It is therefore, says the Bank, impossible to tell whether the assessment is the valuation of the property, the proportion of the value of the common

[3] *Id.*, § 3071.

stock alone or that of the aggregate of the common and preferred. An assessment upon the property, it is alleged, is "void as unauthorized by the statutes of Arizona." If the valuation includes the preferred stock, the complaint alleges it is invalid because of the Act of March 20, 1936, exempting the preferred stock while owned by the Reconstruction Finance Corporation.[6] If the valuation is upon the common stock alone, it is said to be invalid (1) because the valuation is far beyond the actual value and therefore confiscatory and (2) because the valuation is discriminatory since the common stock in other banks is assessed at 75% of the value of common stock, surplus and undivided profits and other classes of property at sixty per cent of its actual value, while this valuation is on the basis of approximately twice the common stock, surplus and undivided profits of the bank and twice its actual value. It is further alleged that this excessive and discriminatory valuation violates R. S. § 5219 which limits the rate of taxation of national bank shares to that assessed "upon other moneyed capital in the hands of individual citizens . . . coming into competition with the business of national banks." It is prayed that action under these assessments for the reasons stated be enjoined as violative of the Constitution and laws of the United States and Arizona.

Section 266 lays down as one of the requirements for a three-judge court that the injunction against the officer of the state to restrain the enforcement, operation or execution of the state statute must be sought "upon the ground of the unconstitutionality of such statute."

In so far as it is alleged that the asessments are void because unauthorized by the Arizona statute, the injunction sought is obviously not upon the ground of the unconstitutionality of the state statute as tested by the federal Constitution.

The allegations that the assessments should be enjoined because violative of the statute exempting preferred stock owned by the Reconstruction Finance Corporation and R. S. § 5219 depend upon no constitutional provision within the meaning of Judicial Code Section 266. If such assessments are invalid, it is because they levy taxes upon property withdrawn from taxation by federal law[7] or in

[6] 49 Stat. 1185.

[7] Pittman *v.* Home Owners' Corp., 308 U. S. 21.

a manner forbidden by the National Banking Act.[8] The declaration of the supremacy clause[9] gives superiority to valid federal acts over conflicting state statutes but this superiority for present purposes involves merely the construction of an act of Congress, not the constitutionality of the state enactment. This was decided as to Section 266 in *Ex parte Bider*,[10] and before that a similar result had been reached in *Lomke* v. *Farmers Grain Company*[11] in regard to a provision of the Judicial Code granting direct appeal to this Court in cases where the sole issue[12] was the unconstitutionality of a state statute.[13]

It is said, however, that the allegations of confiscation and discrimination in valuation of the common shares in comparison with the stock of other banks and other property show the injunction is sought upon the ground of the unconstitutionality of the statute. This point depends upon excessive valuation of the shares. The validity of the statute itself is not involved. Variations by assessors in valuations of like property, taxable under the same statute, sufficiently marked to be discriminatory under the Constitution or valuations so large as to be confiscatory cannot properly be said to be the basis for attack on the ground of the unconstitutionality of the statute. Such assessments, if made and if invalid, are so because of a wrong done by officers under the statute rather than because of the requirement of the statute itself.[14]

But it is said by the petitioner here that the last sentence of Section 3071 requires this excessive and discriminatory assessment. That sentence reads: "When a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real

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[8] R. S. § 5219; Owensboro Nat. Bank v. Owensboro, 173 U. S. 664, 668.

[9] Art. VI, cl. 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land . . ."

[10] 271 U. S. 461, 465-66.

[11] 258 U. S. 50, 52.

[12] Spreckels Sugar Refining Co. v. McClain, 192 U. S. 397, 407.

[13] See W. A. Beard Truck Line Co. v. Smith, 12 F. Supp. 964.

[14] Cf. Ex parte Williams, 277 U. S. 267, 271; Jett Bros. Co. v. Carrollton, 252 U. S. 1, 5.

and personal property of such bank situated in such county, city or town." If this is interpreted as requiring that the apportionment of the value of the capital stock to each county must not be less than the tangible property in that county, the aggregate apportionment may be much larger than the assessed value of the stock. A greater assessment per share will occur if the total valuation is allocated to common shares only. If the valuation, reached under the formula by treating the preferred as capital stock, is allocated among the common shares, only, it would mean that the preferred was treated as stock for purposes of the valuation and disregarded for the assessment of individual shares. The argument of petitioner is that if the result, as he contends the Bank alleges, violates the federal Constitution by discrimination of common shares as compared to shares of other banks without preferred stock or owners of other property, the statute violates it. Therefore, in effect, the attack on the constitutionality of the assessment is an attack on the constitutionality of the statute.

The contention of the Bank, however, is that the assessor misinterpreted the statute; that the objectionable aspect of the assessment is the attribution to the common of the whole amount instead of an apportionment to both preferred and common or the use of the preferred as capital stock in the state valuation formula. We are not now called upon to reach any conclusion upon the meaning of the Arizona tax statutes. If the trial court determines that the assessment complained of is made properly under the statutes and that by the statute the assessment is to be prorated among the common shares, it would determine only a question of statutory construction. It is necessary to distinguish between a petition for injunction on the ground of the unconstitutionality of a statute as applied, which requires a three-judge court,[15] and a petition which seeks an injunction on the ground of the unconstitutionality of the result obtained by the use of a statute which is not attacked as unconstitutional. The latter petition does not require a three-judge court.[16] In such a case the attack is aimed at an allegedly erroneous administrative action.[17] Until the complainant in the district court attacks the constitutionality of the statute, the case does not require the convening of a

[15] Stratton v. St. Louis Southwestern Ry., 282 U. S. 10.

[16] Ex parte Hobbs, 280 U. S. 168.

[17] Ex parte Williams, *supra*.

three-judge court, any more than if the complaint did not seek an interlocutory injunction.[18] Where by an omission to attack the constitutionality of a state statute, its validity is admitted for the purposes of the bill, a determination by the trial court that the assessment accords with the statute would result in the refusal of the injunction and the dismissal of the bill. Jurisdiction, properly assumed, may be lost by the special court, when it appears that a prerequisite such as need for relief against state officers is lacking.[19] Even where the statute is attacked as unconstitutional, Section 266 is inapplicable unless the action complained of is directly attributable to the statute.[20] There is no indication that Congress sought by Section 266 to have every attack on the constitutionality of a state statute determined by a three-judge court. It sought such a bench only to avoid precipitate determinations on constitutionality on motions for interlocutory injunctions.

As the foregoing ground adequately disposes of the petition for mandamus, we do not discuss the other reasons for refusal urged by the Bank.

The motion to file the petition for mandamus is denied.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[18] Stratton v. St. Louis Southwestern Ry., 282 U. S. 10, 15.

[19] Oklahoma Gas Co. v. Packing Co., 292 U. S. 386, 391.

[20] Ex parte Collins, 277 U. S. 565, 567, 569.